Calendar No. 1825

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1801

TOM HOLLANDER CO.

APRIL 23 (legislative day, APRIL 9), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. Res. 247]

The Committee on the Judiciary, to which was referred the bill (S. 282) for the relief of Tom Hollander Co., Superior, Nebr., having considered the same, reports favorably an original resolution (S. Res. 247) referring the bill to the United States Court of Claims pursuant to sections 1492 and 2509 of Title 28, United States Code.

PURPOSE

The purpose of the proposed resolution is to refer S. 282, a bill for the relief of Tom Hollander Co., Superior, Nebr., to the Court of Claims, pursuant to sections 1492 and 2509 of Title 28, United States Code, for such findings of fact and conclusions as shall inform the Congress as to whether or not there is due to this claimant, either legally or equitably, compensation for losses allegedly sustained in connection with a contract entered into by the claimant with the Bureau of Reclamation.

STATEMENT

The record before the committee shows that the claimant submitted the low bid, in the amount of $234,547, for certain construction work to be performed on the Republican River as a part of the Missouri River Basin project, and was awarded a Government contract by the Bureau of Reclamation, Department of the Interior, on March 5, 1951. Under the contract the completion of the work was required by May 3, 1952. The work was accepted by the Government in 1953 as of September 23, 1952, after time extensions based upon excusable causes for

the full period of delay and with the assessment of no liquidated damages.

It appears that the total net earnings under the contract amounted to $234,458.91, or $88.09 less than the original contract value. During the progress of the work under the contract, the claimant presented to the Bureau three claims totaling $43,601.34. These claims were the subject of a conference between the claimant and representatives of the Bureau of Reclamation in February 1953. At the time of this conference, a decision had not yet been reached as to the date on which the work would be regarded by the Government as having been substantially completed so as to end assessment of liquidated damages.

The report to the committee from the Department of the Interior, which is printed in full below, indicates that following the February 1953 conference the disposition of the three claims was as follows: (1) on the first of the three claims, the contractor agreed to accept a lesser amount than that claimed and the lesser amount was paid by the Government as a part of the final payment under the contract; (2) on the second, the contractor was advised that for this claim an exception could be taken on the release on the contract, a procedure of which the contractor did not avail himself; and (3) on the third, the contractor indicated orally that it was his intention to drop the claim. It appears from the Department report that the contractor executed a release without reserving any claims against the Government. It is the view of the Department that even if the contractor lost the sum claimed, no legal or equitable basis is apparent for the granting of the relief asked.

It is the opinion of the committee that the matter should be submitted to the Court of Claims for study and a report to the Congress as to whether or not the claimant is entitled legally or equitably to further compensation, pursuant to sections 1492 and 2509 of title 28 of the United States Code.

Attached for the information of the Senate is the report, dated October 1, 1953, from the Department of the Interior on this claim.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., October 1, 1953.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR LANGER: You have requested a report from this Department on S. 1613, a bill for the relief of Tom Hollander Co., Superior, Nebr.

This bill, if enacted, would authorize the Secretary of the Treasury to pay Tom Hollander Co. the sum of $66,349.30 "in full settlement of all claims against the United States for damages sustained in connection with Bureau of Reclamation Contract Numbered I2r–19373, dated March 5, 1951, as part of the Missouri River Basin project."

I recommend that S. 1613 be not enacted.

Upon completion of the work under the contract mentioned above, the contractor voluntarily executed a release. No claims were re-

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served against the Government. Accordingly, we are unaware of the basis of any claims represented by the bill. However, there is set forth in the following paragraphs a discussion of claims that were advanced by the contractor during the progress of the work. All of these are believed either to have been settled in a manner satisfactory to the contractor or to have been abandoned by his execution of the release on contract.

The contract provided for construction of laterals, sublaterals, drains, and channel changes, including structures, under the Superior lateral system, Superior-Courtland unit, on the Republican River, Missouri River Basin project. Bids for the work were opened on February 13, 1951. Tom Hollander Co. submitted the low bid of $234,547, which was approximately 17.6 percent below the engineer's estimate and $61,546 below the next low bid. Award of contract was made on March 5, 1951. Completion was required within 300 calendar days from the date of receipt of notice to proceed, exclusive of the time between December 1, 1951, and March 15, 1952, inclusive, or by May 3, 1952. The work was accepted by the Government as of September 23, 1952. The contracting officer granted time extensions based upon excusable causes for the full period of delay and no liquidated damages were assessed.

Total net earnings under the contract amounted to $234,458.91 or $88.09 less than the original contract value. During the progress of the work under the contract, the contractor presented three claims totaling $43,601.34 as follows: (1) $7,317.90 for recoupment of preparatory expense and other fixed costs included in unit prices for work deleted under the contract by the Government; (2) $5,415.54 for payment of additional structural excavation and backfill for pipe cradles; and (3) $30,868 for repair of pilpeline siphons because of use by the Government of laterals for delivery of irrigation water and alleged defective specifications.

At a conference in the office of chief engineer of the Bureau of Reclamation in Denver on February 24 and 25, 1953, the above-mentioned claims were discussed with the contractor. The conference was attended by Mr. Tom Hollander on behalf of the contractor, by a representative of the surety company, and by an attorney also representing the surety. (The contractor apparently had encountered financial difficulties in the latter stages of performance of the contract, and a representative of the surety came to the project in the summer of 1952, and assumed joint control with the contractor over the management of the job.) The results of this conference were as follows:

(*a*) Claim (1) was for recovery of certain fixed costs included in bid prices for work affected when a portion of the laterals was deleted from the contract under an order for changes. As a result of the conference, the contractor agreed to accept $2,510 in full settlement of this claim. This sum has been paid to the contractor as part of the final payment made under the contract.

(*b*) Under claim (2) the contractor contended that concrete pipe cradles were "structures" within the meaning of the specifications and, accordingly, that excavation and backfill should be measured for payment on the basis of sloping sides (1 foot horizontally to 1 foot vertically) as provided in the specifications for "structures." It was the contracting officer's view that the pipe cradles were not "structures" and, accordingly, that pay-

ment on the basis of pipe trenches with vertical sides was proper. Excavation at the site of these pipe cradles had been performed by trenching methods and to as nearly vertical sides as practicable. The contractor was advised that the excavation had been measured in accordance with the specifications requirements, that this method was standard practice on similar contracts, and that no further payment could properly be made under the specifications. He was further advised that, if he desired, an exception could be taken on the release on contract for this claim and that, in this event, the contracting officer would issue a finding of fact from which appeal could be taken to the head of the Department of the Interior. No such exception was taken.

(c) Claim (3) for repair of leaks in concrete pipe siphons under roads and railroads, in the sum of $30,868, was based on the contractor's contention that the Government specifications were defective in that it was impossible to lay the siphon pipe in accordance with the specifications without leaks occurring. The contractor also contended that use of laterals before repair of all leaks resulted in deposit of silt and mud in the pipelines and made the repairs more difficult. The contractor's contention of defective specifications was considered to be without merit, the Government specifications having been based primarily on suggestions of the concrete pipe industry and having been used successfully on many other jobs. The portion of the claim based upon increased difficulty of making repairs was likewise considered to be without merit. A heavy rainfall occurred on June 26, 1952, which resulted in a large amount of mud and debris being washed into many of the siphons, and the siphons were tested by the contractor by running water through freshly excavated laterals, also with the result that a large amount of silt was carried into the siphons. It was considered, therefore, that the subsequent use of the lines for irrigation did not increase the amount of mud and debris that had previously accumulated in the siphons. Following this discussion, the contractor indicated orally that it was his intention to drop this claim.

At the time of the February conference, decision had not been reached as to the date on which the work would be regarded by the Government as having been substantially completed so as to end assessment of liquidated damages. Extensions of time previously allowed had extended the required completion date to September 23, 1952. All work other than repair of leaks in siphons at roadway crossings had been completed by that date and, although the work of repairing leaks had continued thereafter, it was agreed on behalf of the Government that the lateral system could be regarded as substantially complete on that date since it was then usable for delivery of water.

All of the three claims just discussed were properly for determination by the contracting officer and, if the contractor was dissatisfied with the decision, he had the right to take an appeal to the head of the Department pursuant to article 15 of the contract. Instead, the contractor agreed to the settlement of claim No. 1, and his action in executing the release on contract without exceptions constituted an abandonment of his rights under claims Nos. 2 and 3. The contractor having abandoned his rights under these claims without resorting

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to the procedures established by the contract for a determination of his rights, no reason is apparent why relief legislation should be enacted.

Even if in the performance of the work the contractor lost the sum claimed, no legal or equitable basis is seen for granting the relief asked. The amount asked for is far greater than the sum of the specific claims heretofore mentioned. It will be noted, however, that the sum claimed by the contractor represents approximately the difference between the Hollander bid and the next low bid, suggesting the possibility that the bid may have been too low. It is believed that, if losses were sustained, they resulted from causes which were in no way the fault or responsibility of the Government. If the contractor suffered losses because of his underestimating the cost or difficulty of performing the work, because of inefficient management, or for any cause not the result of fault on the part of the Government, no basis would be perceived as to why he should be relieved from such losses. Certainly, the contract implies no guaranty that the contractor will realize a profit. To reimburse losses where no fault on the part of the Government is involved would be inconsistent with the requirements of law that contracts be let on the basis of competitive bidding to the lowest responsible bidder.

For the foregoing reasons, I strongly recommend that S. 1613 be not enacted. If, upon hearing or otherwise, it is made to appear that there is any basis for a claim which has not been brought to our attention and is not discussed above, we would appreciate an opportunity to consider the same and to comment thereon.

I may note that, unless there is justification for the claim of which we are not now aware, payment of the sum stated in S. 1613 would be in the nature of a gratuity which could not properly be treated, in our judgment, as a cost of the Missouri River Basin project reimbursable by the water users.

The Bureau of the Budget has advised that there would be no objection to the submission of this report to your committee.

Sincerely yours,

ORME LEWIS,
Assistant Secretary of the Interior.

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Calendar No. 1826

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1802

ATHANASE G. POLITIS

APRIL 23 (legislative day, APRIL 9), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1812]

The Committee on the Judiciary, to which was referred the bill (S. 1812) for the relief of Athanase G. Politis, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Athanase G. Politis. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

STATEMENT OF FACTS

The beneficiary of the bill is a 63-year-old native and citizen of Greece who last entered the United States at Miami, Fla., on October 1, 1954, when, as the Greek Ambassador to the United States, he was admitted as a foreign government official. He has been a career diplomat in the foreign service of Greece since 1917 and served as Greek Ambassador to the United States from June 1950 to December 1954. He is presently residing in New York City where he is engaged in writing a book on his mission in Soviet Russia from 1943 to 1947. In addition to his outstanding diplomatic career, he is the author of several books and it would be in the cultural interests of the United States to permit him to reside here permanently.

A letter, with attached memorandum, dated July 12, 1955, to the then chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the bill reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., July 12, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate,
Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 1812) for the relief of Athanase G. Politis, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the New York, N. Y., office of this Service, which has custody of those files.

The bill would grant the beneficiary the status of a permanent resident of the United States upon payment of the required visa fee. It would also direct that one number be deducted from the appropriate immigration quota.

The beneficiary is chargeable to the quota for Greece.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE ATHANASE G. POLITIS, BENEFICIARY OF S. 1812

The beneficiary, Athanase G. Politis, is a native and citizen of Greece who was born on March 24, 1893. He is single and resides at 7 East 63d Street, New York, N. Y. Mr. Politis was the Greek Ambassador to the United States from June 1950 to December 5, 1954. He is presently awaiting a new assignment by his Government. After completing his education in Greece, he attended the University of Paris where he received a masters and a doctor of laws degree. He served honorably in the Greek Army from 1915 to 1918, and again from 1921 to 1922. His assets in the United States consist of 2 bank accounts with a combined balance of $9,000, 3 parcels of real-estate holdings valued at $30,000, and personal effects estimated at $100,000. The beneficiary's assets abroad consist of a bank account in London, England, with a balance of $6,000, securities valued at approximately $100,000, and real-estate holdings in Athens, Greece, estimated at $15,000. Mr. Politis' father is a citizen and resident of Greece. A brother, a citizen of Greece, resides at Bologna, Italy.

The beneficiary last entered the United States at Miami, Fla., on October 1, 1954, at which time he was admitted as a government official (Ambassador) to the United States for the duration of his status as such.

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The beneficiary, a career diplomat, has been in the Foreign Service of Greece since 1917, having represented his country in Egypt, England, Japan, and Russia. Special missions took Mr. Politis to various world capitals during 1931 and 1932. Mr. Politis in addition to his duties as Ambassador to the United States, was also accredited to Mexico, Cuba, Panama, and Colombia with the rank of Minister. He was head of the Greek delegation at the peace conference with Japan, held in San Francisco, Calif., in September 1951. He signed the peace treaty for Greece on September 8, 1951. Mr. Politis also headed the Greek delegation to the Seventh General Assembly of the United Nations in the fall of 1952. He has received several foreign citations in addition to honors bestowed upon him by his own country. While in Egypt, the beneficiary wrote a history of the Greek colonies in modern Egypt. He is presently in the process of writing a book on his mission in Soviet Russia from 1943 to 1947.

A letter dated December 13, 1955, to the then chairman of the Senate Committee on the Judiciary from the Assistant Secretary of State with reference to the bill reads as follows:

FEBRUARY 21, 1956.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR SENATOR KILGORE: The Department refers again to your letter of December 12, 1955, which was acknowledged under date of December 13, 1955, concerning S. 1812, for the relief of Athanase G. Politis.

Mr. Politis was Greek Ambassador to the United States from June 1950 to December 5, 1954. There is no objection to the enactment of legislation, if the Congress is so disposed, to confer upon Mr. Politis the status of an alien lawfully admitted into the United States for permanent residence.

The Department has been informed by the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

THRUSTON B. MORTON,
Assistant Secretary
(For the Acting Secretary of State).

Senator Theodore Francis Green, the author of the bill, has submitted the following information in connection with the case:

ATHANASE G. POLITIS, AMBASSADOR OF GREECE TO THE UNITED STATES

A career diplomat, Athanase G. Politis, Ambassador of Greece to the United States, has been in the Foreign Service of Greece for over 35 years, having represented his country in Egypt, England, Japan, and Russia. He has also served at the Ministry of Foreign Affairs in Athens, and on special missions to various European and other capitals. He came to the United States as Greek Ambassador in June 1950.

Mr. Politis was born on the island of Corfu, Greece, on March 24, 1893, the son of George Politis, a physician, and the late Argyri Politis, nee Ralli. For many years his uncle, Nicholas Politis, an internationally known jurist, was Greek Minister to France and professor of international law at the University of Paris. Ambassador Politis studied law in Paris and received his master's degree in 1914. In 1917 he entered the Greek Ministry of Foreign Affairs. His diplomatic career was temporarily interrupted by service in the Greek Army in 1918, but was resumed in 1919 when he returned to Paris as a member of the Greek delegation to the Paris Peace Conference. At the Austrian Commission on Reparations, held in Vienna in 1920, he served as secretary-general of the Greek delegation. During the same year, he presented his thesis to the University of Paris and was awarded the degree of doctor of laws.

An infantry reserve officer, Mr. Politis was recalled to active military duty from March 1921, until early in 1922, when he was discharged because of wounds received in the Asia Minor campaign. He then returned to the Foreign Office in Athens, where he remained for 2 years. The next 7 years, 1924–31, were spent in Egypt, first as vice consul with the Greek consulate general in Alexandria, until early in 1926, and later as first secretary of the Greek Legation and chargé d'affaires in Cairo. While in Egypt, Mr. Politis wrote a history of the Greek colonies in modern Egypt, which was published in two volumes in 1928 under the title "Hellenism and Modern Egypt," in Greek and French editions. Four other works were also produced during this period, all published in Egypt in 1931: Proposals Toward an Alliance Between Egypt and Greece in 1867 (in French); The Turco-Egyptian Conflict of 1838–41 (in French); Last Years of the Reign of Mohamed Aly, based on Greek diplomatic documents (in French); and Suggestions for the Organization of the Greeks in Egypt (in Greek).

The Geographic Society of Egypt published another of his books. This work, Relations Between Greece and Egypt During the Reign of Mohamed Aly, 1833–49, was written in French and published in Rome in 1935.

Special missions took Mr. Politis to various capitals—Addis Abeba, Paris, London, Berlin, Copenhagen, Vienna, and Geneva, during 1931 and 1932, after which he returned to Athens to the post of Director in the Ministry of Foreign Affairs, where he remained until transferred to London in 1936 as counselor of the Greek Legation.

Mr. Politis went to Tokyo as Minister of Greece in 1939. Upon Japan's entry into World War II, he was placed under house arrest. After several months, he was permitted to leave the country in an exchange of diplomats. Upon his liberation, he was appointed Ambassador of Greece to the Soviet Union. While still serving in that capacity he went to Paris in 1946 where he served as ranking member of the Greek delegation to the Paris Peace Conference. When the Soviet Ambassador to Athens was recalled in 1947, Ambassador Politis returned to Greece and headed the Directorate of Economic Affairs in the Ministry of Foreign Affairs.

During the next few years, Ambassador Politis represented his country at a number of conferences held by specialized agencies of the United Nations. As head of the Greek delegation, he attended the International Trade Organization Conference in Habana, Cuba, in

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1947–48, and the second session of the ITO in Geneva in 1948. In 1949 he headed the Greek delegation to the Conference on Tariffs and Trade at Annecy, France. This Conference produced an agreement between 33 nations on a series of tariff reductions.

In April 1950, Ambassador Politis succeeded retiring Ambassador Vassili Dendramis as Ambassador of Greece to the United States. When Ambassador Politis presented his credentials to President Truman on July 13, he stated that his countrymen looked on the United States "as the symbol of hope and freedom in the world."

The Ambassador, in addition to his duties in Washington, is also accredited to Mexico, Cuba, Panama, and Colombia with the rank of Minister.

Ambassador Politis was the head of the Greek delegation at the peace conference with Japan, held in San Francisco in September 1951. He signed the peace treaty for Greece, on September 8, 1951.

He also headed the Greek delegation to the Seventh General Assembly of the United Nations in the fall of 1952.

Ambassador Politis, apart from Greek, speaks English, French, German, Italian, Spanish, and Russian.

He is a member of the International Rotary Club and the Institute of Egypt.

The honors bestowed upon him by his own country include: Grand Cross of the Royal Order of the Phoenix, which was conferred upon him by His Majesty the King of the Hellenes during the recent royal visit to the United States, Grand Commander of the Royal Order of George I, Silver Cross of the Royal Order of the Saviour, Greek Military Cross, Greek Cross for Gallantry, and Medal for Military Valor. He also holds the Cross of Commander of the Order of the Holy Sepulchre.

He is the recipient of several foreign distinctions: Grand Commander of the Order of the Star (Ethiopian); Grand Commander of the Order of Menelik (Ethiopian); Grand Commander of the Order of the Nile (Egyptian); French Military Cross with Swords; Commander of the Legion of Honor (French); Gold Cross of the Royal Order of the White Eagle (Yugoslav); Commander of the Order of Chiaho (Golden Wheat) (Chinese); and Commemorative Medal for the Coronation of George VI.

The Ambassador is unmarried and lives at the Royal Greek Embassy, 2221 Massachusetts Avenue NW., Washington, D. C.

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The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1812) should be enacted.

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Calendar No. 1827

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1803

GREGORIO SPIROS FERENTINOS

APRIL 23 (legislative day, APRIL 9), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2064]

The Committee on the Judiciary, to which was referred the bill (S. 2064) for the relief of Gregorio Spiros Ferentinos, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Gregorio Spiros Ferentinos. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

STATEMENT OF FACTS

The beneficiary of the bill is a 44-year-old native and citizen of Greece who last entered the United States at New Bedford, Mass., as a seaman on April 14, 1949. His ship was taken out of service and he has remained here every since. His wife and child reside in Greece. He claims that his life would be in danger were he to return to Greece because he played an active part against the Communists there. His two brothers, who live in Europe, also fear to return to Greece, their native land, for similar reasons. The beneficiary resides in Cleveland, Ohio, and works as a painter. Information is to the effect that he has cooperated with governmental agencies in connection with the enforcement of the immigration laws.

A letter, with attached memorandum, dated August 5, 1955, to the then chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the bill reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., August 5, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2064) for the relief of Gregorio Spiros Ferentinos, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Cleveland, Ohio, office of this Service, which has custody of those files.

The bill would grant the beneficiary permanent residence in the United States upon payment of the required visa fee. It would also direct that one number be deducted from the appropriate immigration quota.

The beneficiary is chargeable to the quota for Greece.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE GREGORIO SPIROS FERENTINOS, BENEFICIARY OF S. 2064

Gregorio Spiros Ferentinos, a native and citizen of Greece, was born on February 12, 1913. He married Koula Geranos, a native and citizen of Greece, on December 23, 1940, in Piraeus, Greece. Neither was previously married. Of this union a daughter Maria, was born on September 23, 1941, in Astacos, Greece, and she resides with her mother in Greece. The beneficiary, who resides at 2087 West 14th Street, Cleveland, Ohio, is employed on a project in Cleveland, Ohio, as a painter by the Buffalo Sheeting & Painting Co., Buffalo, N. Y., and earns $3.30 per hour. He attended grammar school for 3 years in Greece and has had training as a seaman on Greek ships. Mr. Ferentinos' assets consists of Government bonds and personal effects which he values at approximately $2,000. The beneficiary's parents, 3 brothers, and 2 sisters reside in Greece. He has one sister residing in Australia. Prior to his last entry to the United States, Mr. Ferentinos was employed as a seaman on Greek ships for approximately 15 years.

Mr. Ferentinos first entered the United States as a seaman on April 29, 1947, at New York, N. Y., and has had subsequent entries as such. He last entered the United States at New Bedford, Mass., on the steamship *St. Jorge S.*, on April 14, 1949, when he was admitted for the period of time the vessel was in port, not exceeding 29 days. Deportation proceedings were instituted by the service of a warrant of arrest

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on May 28, 1951, charging that at the time of entry he was an immigrant not in possession of a valid immigration visa and not exempted from the presentation thereof. At a hearing held on January 18, 1952, the special inquiry officer dismissed the above charge, but found Mr. Ferentinos to be subject to deportation for having remained in the United States for a longer period than permitted by the terms of his temporary admission and ordered deportation. On January 22, 1953, the Board of Immigration Appeals dismissed the beneficiary's appeal and a warrant for his deportation was issued on January 30, 1953. He subsequently filed an application for the adjustment of his immigration status under section 6 of the Refugee Relief Act of 1953, which was denied on February 24, 1955.

The beneficiary has had no military service in the United States, but testified that he served in the Greek Army on two occasions; the first commenced in September 1932 at which time he served 14 months, and the second in October 1940 at which time he served 8 months. He has testified that because of his cooperation, from 1941 to 1946 with the Greek and English Governments in opposition to the Communist movement then gaining strength in Greece, he was forced to leave Greece to avoid death at the hands of the Communists and his return to Greece would endanger his life.

Senator George H. Bender, the author of the bill, has submitted a number of letters and documents in connection with the case, among which are the following:

AFFIDAVIT

STATE OF OHIO,
County of Cuyahoga, ss:

Gregorios Spiros Ferentinos, being first duly sworn according to law, deposes and says that;

He was born February 13, 1912, on the island of Kolamos, Greece, and lived there until 1939, when he took up residence in Pereaus, Greece. On December 23, 1940, he married Koula Geranos, in Pereaus, and one child, Maria, was born to them on September 23, 1941. His wife and child still reside in Pereaus.

His father, Spiros Ferentinos, presently residing in Kolamos, Greece, was a sailing ship owner, and the affiant began sailing at the age of about 10 years on his father's boats, served in the Greek Army for about 14 months from 1932 until 1933, thereafter sailing on Greek vessels. About 1934, with his brother Gerasimos, affiant purchased a motor vessel and carried cargo between Greece and the islands, and while he served in the Greek Army during World War II, his brother sailed their vessel under jurisdiction of the Greek Government. Later, their ship was seized by the Germans and sunk about 1943. He thereafter captained a Greek vessel until about 1946, when he was forced to leave Greece because of his cooperation with the Greek and English Governments against the Communists, escaping to France, and later to Belgium, where he obtained employment aboard a ship of Greek registration, manned by American officers and Portuguese crew, later signing on a Greek vessel of Panamanian registry, the

S. S. Georges, and with a Greek crew, which arrived at Baltimore, Md., about April 23, 1949. The second officer, Xenofon Kiriakou, and eight others who joined the crew, were Greek Communists placed aboard to communize the rest of the crew. The shipowners were unable to sail the vessel with those people, and took it out of service, leaving the affiant in the United States without employment. The affiant has been unable to join another Greek vessel without joining the Greek Communist Seamen's Union, and accordingly has remained in the United States since April 1949.

Affiant's two brothers, Gerasimos and Tilemahos, who also cooperated with the Greek Government against the Communists, were forced to leave Greece to avoid persecution or death at the hands of the Communists, and are presently sailing on small vessels between European ports, and cannot return to Greece. His brothers have told him that should he return to Greece, the Communists would seek to inflict reprisals for his anti-Communist activities.

Further, the affiant states that because of his cooperation with American officials, which fact is known to local immigration authorities, he believes his return to Greece would endanger his life at the hands of the Greek Communists.

Affiant therefore prays the United States Government to grant him relief under the provisions of section 6 of the Refugee Relief Act of 1953.

GRIGORIOS FERENTINOS.

Subscribed and sworn before me at Cleveland, Ohio, this 6th day of October 1953.

FLOYD E. AULT,
Notary Public.

My commission expires March 23, 1956.

CLEVELAND 11, OHIO, *March 7, 1956.*

Hon. GEORGE H. BENDER,
Senate Office Building,
Washington, D. C.

MY DEAR SENATOR: Reference is made to the case of Gregorios Spiros Ferentinos, who is the beneficiary of private bill S. 2064, introduced by you during the 1st session of the 84th Congress, which I understand will be considered by the Committee on the Judiciary within the next few days.

Mr. Ferentinos' case first came to my attention just prior to my retirement as officer in charge of the Cleveland office of the Immigration and Naturalization Service. Mr. Roy Conde, a United States citizen of Greek origin, who was employed as an interpreter by the Service on a part-time basis, gave me information obtained by him from Ferentinos which later resulted in the apprehension of a previously deported Greek alien, allegedly a Communist, and who I understand has since been deported the second time. Since that time, about February 1953, I have arranged several appointments between Service personnel and Ferentinos at which he furnished valuable information to assist them in the enforcement of the immigration laws.

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Although I am sure the investigation report prepared by the Immigration Service for the Judiciary Committee last summer makes mention of the subject's cooperation with the Service in these matters, I am attaching hereto for your information copies of affidavits which are contained in Service files relative to his background, past and present, as well as copies of translations of documents having a bearing on his conduct and character in Greece. The Service records will also show tht Mr. Ferentinos applied for relief under section 6 of the Refugee Relief Act of 1953, which relief was denied him. No other form of relief is available to him under present law and unless favorable action is had on the private bill introduced by you, the Service will have no alternative but to deport him to Greece.

Because of the subjects background, and his conduct since arrival in this country as outlined in the enclosed papers, I believe he deserves favorable consideration by the Congress. I am sure his friends in the Greek community of Cleveland will appreicate anything you can do in this connection.

With sincere personal regards, I remain,

Respectfully,

FLOYD E. AULT.

Senator Bender also submitted the following affidavit which reads in part as follows:

AFFIDAVIT

STATE OF OHIO,

County of Cuyahoga, ss:

Roy Conde, residing at box 13, North Benton, Ohio, being first duly sworn, deposes and says that—

He is a native of Greece, age 52, and naturalized a citizen of the United States on October 8, 1920 at Camp Upton, Long Island, N. Y.;

That about October 1949 he became casually acquainted with one Gregorios Spiros Ferentinos, a native of Greece, and during the early part of the year 1951, through working with him on painting crews became acquainted with him to the extent that the subject, Ferentinos began relating his personal experiences to him, the affiant;

That following the arrest of the subject, Ferentinos, by immigration authorities, the said Ferentinos, confided in the affiant that he cooperated with the Greek Government against the Communists, who following World War II, sought to overthrow the Greek Government and was forced to leave Greece to avoid death at the hands of Communists and that he feared to return to Greece for the same reason;

That when the subject Ferentinos learned that he, the affiant, was employed as an interpreter by the United States Immigration Service, he, Ferentinos, furnished the names of many Greek aliens, who he believed to be connected with the Greek Communist movement in the United States;

That the affiant firmly believes that should the subject, Ferentinos be forced to return to Greece, he would be subjected to persecution and possibly death at the hand of Communists in Greece because of his anti-Communist activities in Greece and in the United States;

Further that he believes the subject, Gregorios Spiros Ferentinos to be a person of good moral character and deserving of consideration for adjustment of status under the Refugee Relief Act of 1953.

ROY CONDEZ.

Sworn to and subscribed before me this 4th day of June 1954, at Cleveland, Ohio.

[SEAL] FLOYD E. AULT,
Notary Public.

My commission expires March 23, 1956.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2064) should be enacted.

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Calendar No. 1828

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1804

JUSTIN G. MAILE AND THEODORE R. HILBIG

APRIL 23 (legislative day, APRIL 9), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 907]

The Committee on the Judiciary, to which was referred the bill (H. R. 907) for the relief of Justin G. Maile and Theodore R. Hilbig, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of this proposed legislation is to authorize the payment of $401.60 to Justin G. Maile and $546.65 to Theodore R. Hilbig, for personal effects destroyed by fire which occurred on October 12, 1953, at the East Fork Bridge construction camp of the Alaska Road Commission, Mount McKinley National Park, Alaska.

STATEMENT

The claimants in this bill are employees of the Alaska Road Commission, working in the vicinity of Mount McKinley National Park, Alaska. On October 12, 1953, they were quartered in a framed tent, for the use of which they paid a standard daily charge and where they kept the personal effects for which the claims are made. On that morning a fire broke out in their tent, which was discovered by the camp cook at about 10 a. m., when it had progressed beyond control. Every efforts was made to extinguish the fire, but the tent and contents were destroyed within a very short time.

The cause of the fire is unknown. A possible cause assigned is that the oil heating stove backfired or exploded. There is no indication that the stove was out of repair or improperly used or attended. In fact, there is no evidence of any negligence or wrongful act or omission

on the part of any employee of the Commission, including the claimants. For this reason, the Department of the Interior was unable to consider these claims administratively under the provisions of the Federal Tort Claims Act.

Claimants submitted to the Department lists of their personal effects destroyed by the fire and, after taking into consideration the normal depreciation of such articles, the Department has approved the amounts claimed, as set forth in the bill.

Attached hereto for the information of the Senate are two letters from the Department of the Interior setting forth in detail the facts in this case, as well as the lists of the personal effects lost by the claimants.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., July 12, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. REED: Your letter of April requests a report of the facts disclosed by our files as to H. R. 8808, a bill for the relief of Justin G. Maile and Theodore R. Hilbig, together with our opinion as to the merits of the bill.

I recommend that H. R. 8808 be enacted.

The bill would authorize payment of the sum of $401.60 to Justin G. Maile and of the sum of $546.65 to Theodore R. Hilbig, for personal effects destroyed in a fire at the East Fork Bridge construction camp of the Alaska Road Commission. The claimants were employes of the Commission and were quartered in a framed tent for the use of which they paid a standard daily charge and where they kept the personal effects for which the claims are made.

The fire was discovered by the camp's cook at around 10 a. m. on October 12, 1953, when it had progressed beyond control. Four 15-pound CO^2 fire extinguishers were used on the fire, but the tent and contents were destroyed within a very short time.

The cause of the fire is unknown. A possible cause assigned is that the oil heating stove backfired or exploded. There is no indication that the stove was our of repair or improperly used or attended. In fact, no negligent or wrongful act or omission on the part of anyone, including the claimant is known, and I am informed that the Commission has carefully investigated the matter.

Claims for the losses were submitted to the Solicitor of this Department, who made an administrative determination under date of March 31, 1954, finding that as the loss was not caused by a negligent or wrongful act or omission on the part of an employee of the Department, the claim could not be paid under the provision of the Federal Tort Claims Act (28 U. S. C. 2672) permitting administrative adjustment of claims.

Copies of lists of the articles making up the respective claims, signed by the claimants, are enclosed. The list submitted bv Mr. Maile, which totals $467.44, includes wearing apparel, camping equipment, a pair of glasses, and a pair of contact lenses. The list submitted by Mr. Hilbig, in the amount of the claim set forth in the bill, includes wearing apparel, camping equipment, a radio, field glasses, eyeglasses, wristwatch, and camera.

As these lists do not show the basis of the valuation by including condition or age of the articles, original cost, or depreciation, we have asked the Alaska Road Commission to obtain for us statements of the claims giving such information. The Commission advises us that as the claimants' addresses of record are in isolated Alaskan localities, probably 3 or 4 weeks will be required in order to secure replies from the claimants. As soon as the additional material is received, it will be forwarded to you.

The claims appear to be ones for equitable relief. Fire of undetermined origin destroyed the personal effects of the claimants while kept in living quarters furnished by the Alaska Road Commission at a standard charge to the claimants under the terms of the employment. Such quarters consisted of a type of temporary shelter customarily used at outlying points and known to present fire

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hazards against which it is neither reasonable to provide adequate fire protection nor to expect the employee to carry fire-insurance coverage.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

D. OTIS BEASLEY,
Administrative Assistant to the Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., August 4, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. REED: This will further reply to your request for our views on H. R. 8808, a bill for the relief of Justin G. Maile and Theodore R. Hilbig. In our original report of July 12, 1954, we advised you that additional information had been requested from the Alaska Road Commission and would be forwarded to your committee when received.

Enclosed herewith are the following:

1. Statement made by claimant T. R. Hilbig.
2. Statement addressed to E. C. Simmons, Assistant Chief, Administrative Division, Alaska Road Commission, verifying the statements of claimants Maile and Hilbig, signed by Don Franklin, foreman, East Fork, and Peter J. Bagoy, general foreman, Cantwell, Alaska.
3. List of clothing and personal effects of Theodore R. Hilbig which were lost in a fire October 12, 1953, at McKinley Park, East Fork, Alaska.
4. List of clothing and personal effects of Justin Maile which were lost in a fire October 12, 1953, at East Fork, Alaska.

Sincerely yours,

FRED G. AANDAHL,
Assistant Secretary of the Interior.

MCKINLEY PARK, ALASKA, *June 18, 1954.*

To Whom It May Concern:

In regards to the original and new list of clothing and personal property lost by fire. Which are the same I allowed for depreciation in my original claim, including over $80 worth of new clothing, just received but never used. Hoping this statement is satisfactory.

T. R. HILBIG.

JUNE 18, 1954.

ALASKA ROAD COMMISSION,
McKinley Park, Alaska, June 18, 1954.

E. C. SIMMONS,
Assistant Chief, Administrative Division.

DEAR SIR: This is to state that I, Don Franklin, foreman at East Fork, verifies the statement that the personal belongings of Justin G. Maile and Theodore R. Hilbig were destroyed by the fire at the East Fork camp.

DON FRANKLIN,
Foreman, East Park.
PETER J. BAGOY,
General Foreman, Cantwell, Alaska.

List of clothing and personal effects lost by fire Oct. 12, 1953, McKinley Fork at East Fork, Alaska

	Depreciated value	New cos.	Amount of depreciation
Clothing:			
1 parka and windbreaker	$18.00	$60.00	$42.00
1 Navy jacket	10.00	22.00	12.00
1 outfit rain gear	27.00	31.00	4.00
1 dress jacket	30.00	35.00	5.00
1 dress hat	10.00	16.00	6.00
2 work shirts	6.00	7.00	1.00
2 wool shirts	24.00	28.00	4.00
1 wool trousers	9.95	11.95	2.00
1 pair levis	3.00	3.75	.75
1 pair 8, workshoes	10.00	16.00	6.00
1 pair dress shoes	14.00	18.00	4.00
1 pair galoshes, 4-buckle	4.95	4.95	
1 pair house slippers	3.00	4.00	1.00
2 pair boot liners	3.90	3.90	
6 pair wool sox	4.50	6.00	1.50
1 pair mittens	2.25	3.00	.75
2 pair work gloves	2.50	3.00	.50
1 pair wool underwear	9.95	13.00	3.05
1 work hat	2.85	3.50	.65
2 sweat shirts	5.30	5.30	
1 sweater	10.00	14.00	4.00
1 bed roll	32.50	42.50	10.00
3 bath towels	6.00	6.00	
4 face towels	3.00	3.00	
6 pairs nylon sox at $2.50	15.00	15.00	
1 shaving outfit complete	10.00	15.00	5.00
Total	277.65	360.85	113.20
Personal effects:			
1 radio	65.00	87.50	22.50
1 pair field glasses	40.00	65.00	25.00
1 pair eyeglasses	55.00	55.00	
1 wristwatch	85.00	97.50	12.50
1 camera	24.00	38.00	14.00
Total	546.65	733.85	187.20

I hereby certify the above claim to be correct and just, that payment of any part thereof has not been received and that none of the items were covered by insurance of any kind.

THEODORE R. HILBIG.

JUNE 18, 1954.

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List of items burned in fire of tent Oct. 12, 1953, East Fork Camp, ARC

	Purchase price	Depreciated to
Duffelbag	$3.25	$2.44
Pack sack	4.65	2.32
14 large handkerchiefs, at 25 cents	3.50	3.07
12 pair of wool socks, at 90 cents	10.80	8.64
4 pair of dress socks, at 85 cents	3.40	3.40
2 towels, bath size, at $1.25	2.50	2.00
1 Filson coat	35.00	26.26
1 water-repellant coat	9.75	9.75
1 work jacket	7.25	5.44
1 wool cap	1.75	1.75
1 southwestern rain cap	2.49	2.49
1 rubber pants	7.95	5.96
1 rubber coat	7.95	5.96
1 pair of workshoes	6.50	3.25
1 pair of dress shoes	15.00	15.00
2 pairs Pendleton shirts, at $12.95	25.90	25.90
1 Woolrich shirt	8.65	4.32
2 pairs of work pants at $5.50	11.00	8.25
1 down-filled sleeping bag	29.75	14.87
1 wool sweater	4.95	4.33
1 pair of mitts	2.25	1.99
2 pairs of mitt liners, at 85 cents	1.70	1.49
1 safety razor	1.75	1.50
1 shaving brush	1.25	
1 toothbrush	.50	.75
1 can toothpowder	.50	
1 pair of contact lenses	175.00	175.00
1 pair of glasses	45.00	35.00
Gloves	1.50	1.50
2 pairs of 100s underwear	21.00	15.75
1 Parker pen 51	15.00	13.13
Total purchase price	457.44	[1] 401.60

[1] This is the amount of the claim.

JUSTIN MAILE.

JUNE 22, 1954.

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Calendar No. 1829

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1805

ARTHUR K. JEFFERSON

APRIL 23 (legislative day, APRIL 9), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1143]

The Committee on the Judiciary, to which was referred the bill (S. 1143)for the relief of Arthur K. Jefferson, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill as amended do pass.

AMENDMENT

On page 1, line 6, strike out the figures "$20,000" and insert in lieu thereof the figures "$7,500".

PURPOSE

The purpose of the proposed legislation, as amended, is to authorize and direct the Secretary of the Treasury to pay out of any money in the Treasury not otherwise appropriated, to Arthur K. Jefferson, of Baltimore, Md., the sum of $7,500, for compensation for permanent injuries sustained by him as the result of an operation performed on him on July 3, 1945, at the Fort Belvoir Hospital, Va., while a member of the United States Army, in which a United States Army Medical Department towel was negligently left in his stomach until discovered and removed during a subsequent operation on March 13, 1946.

The bill further provides in sec. 2 that the sum appropriated by this act to the said Arthur K. Jefferson shall be in addition to any benefits to which he is entitled under the laws providing benefits for veterans.

STATEMENT

The Department of the Army, in its report, states that while deeply regretting the fact that the claimant incurred disability while in the

military service, is obliged to recommend that this bill be not favorably considered by the Congress, and refers to its report on H. R. 4329 of the 83d Congress, for the relief of Arthur K. Jefferson.

It is believed that the completeness of the Army report is such that the facts therein should be set out verbatim and in full at this point:

The records of the Department of the Army show that Arthur K. Jefferson, who had been an aviation mechanic at the Glenn L. Martin Co., enlisted in the Army of the United States on October 22, 1942, and was assigned Army Serial No. 13135713; that at the time of his enlistment he was 45 years of age; that he had previously had an abdominal operation for appendicitis from which he had apparently recovered; that about 5 months after enlisting, and while in the Army, an abdominal operation was performed on him in an Army hospital at Indiantown Gap, Pa., during which one of his kidneys was removed; that from January 19, 1943, to May 17, 1943, he had various medical complaints diagnosed as hydronephrosis; that a subsequent diagnosis of herpes of the lower lip was reported cured on February 7, 1943; that on February 19, 1943, a further diagnosis of this soldier indicated pleurisy, which was reported cured on March 3, 1943; that from February to April 1945 he had an ill-defined condition of the gastrointestinal system, including vomiting, with nonfunctioning gall bladder; that on July 3, 1945, he was operated on for cholecystostomy in the Army hospital at Fort Belvoir, Va., by the chief surgeon at said hospital, and that he was honorably discharged from the Army on January 9, 1946.

A few days after his discharge from the Army Mr. Jefferson filed a formal application with the Veterans' Administration for compensation on account of service-connected disability. On March 18, 1946, the Veterans' Administration awarded to the claimant disability compensation in the amount of $34.50 per month, retroactively to January 10, 1946 (the day following the date of his discharge from the Army), upon a service-connected disability rating of 30 percent on account of the surgical removal of a kidney while he was in the military service.

Around the end of February 1946 Mr. Jefferson began to suffer from vomiting spells and nausea, which grew increasingly more severe until March 8, 1946, when he went to the Johns Hopkins University Hospital in Baltimore, Md., for treatment. On March 13, 1946, he was operated on at said hospital. The operating surgeon found a well-healed medical scar in the front of the abdomen, through which he operated. During the course of such operation the surgeon found a towel in the lower part of Mr. Jefferson's stomach which had partly worked into the duodenum. The towel was removed, measured and photographed. It was 30 inches long by 18 inches wide and was marked "Medical Department U. S. Army." After this operation Mr. Jefferson was treated at the United States Marine Hospital in Baltimore, medically and surgically. It was found that he had sustained a serious hernia, which was attributed to the aftereffects of the operation performed on him at the Johns Hopkins University Hospital and thought to have been caused by inflammation or infection as a postoperative result of the removal of the towel.

The Department of the Army has been advised by the Veterans' Administration that on June 7, 1946, the compensation of Mr. Jefferson was increased to $115 per month, retroactively to January 10, 1946 (less the prior payments that had been made to him at the rate of $34.50 per month), upon a disability rating of 100 percent. In a letter to the Department of the Army, dated July 22, 1953, the Veterans' Administration further advised with respect to this claimant as follows:

"The veteran's compensation was increased from $115 monthly to $138 monthly from September 1, 1946, under Public Law 662, 79th Congress, and further increased to $159 monthly from September 1, 1948, under Public Law 877, 80th Congress, which legislation authorized the payment of additional compensation for his wife. Under Public Law 339, 81st Congress, his payments were increased to $171 monthly from December 1, 1949. They were reduced to $150 monthly from September 14, 1951, on account of the death of his wife, and increased to $171 monthly from March 6, 1952, on the basis of remarriage. His compensation was further increased to $193.50 monthly effective July 1, 1952, under Public Law 356, 82d Congress, and he is being paid this monthly rate of compensation at this time. Estimated from the awards in file, this veteran is shown to have received compensation to date of approximately $14,000."

In September 1947 Mr. Jefferson filed a suit against the United States in the United States District Court for the District of Maryland (civil action No. 3692) in which he prayed for a judgment against the Government under the Federal

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Tort Claims Act in the amount of $100,000 and costs for the damages sustained by him as the result of a towel having been left in his abdomen at the time he was operated on in an Army hospital on July 3, 1945. After a trial of this case on the merits the district court dismissed the suit on the ground that the United States was not liable in damages under the Federal Tort Claims Act in a suit of this character for service-connected injuries sustained by a member of the Armed Forces of the United States (*Jefferson* v. *United States*, 77 F. Supp. 706). The district court in its opinion on the case held, in pertinent part, as follows (p. 711):

"* * * the Federal Tort Claims Act does not cover this case of the plaintiff because it was a service-connected disability occurring while the plaintiff was an enlisted man in the United States Army and occurring as a result of negligence on the part of employees of the Government at the hospital."

The decision of the district court dismissing the suit of Mr. Jefferson was affirmed by the United States Court of Appeals for the Fourth Circuit (*Jefferson* v. *United States*, 178 F. 2d 518). The Supreme Court of the United States granted a writ of certiorari to review the decision in this case. It also granted writs of certiorari to review the decisions of other lower Federal courts in two other cases brought under the Federal Tort Claims Act for damages on account of the death of two servicemen, who allegedly lost their lives as the result of negligence on the part of military personnel while in the performance of their official duties. The three cases were heard together and disposed of in the same opinion by the Supreme Court (*Feres* v. *United States*, 340 U. S. 135). The Supreme Court, in holding that no recovery could be had in any of said cases, said (pp. 144–146):

"No federal law recognizes a recovery such as claimants seek. * * *

"This Court, in deciding claims for wrongs incident to service under the Tort Claims Act, cannot escape attributing some bearing upon it to enactments by Congress which provide systems of simple, certain, and uniform compensation for injuries or death of those in armed services. * * *

"A soldier is at peculiar disadvantage in litigation. Lack of time and money, the difficulty if not impossibility of procuring witnesses, are only a few of the factors working to his disadvantage. * * * The compensation system, which normally requires no litigation, is not negligible or niggardly, as these cases demonstrate. The recoveries compare extremely favorably with those provided by most workmen's compensation statutes. * * *

"We conclude that the Government is not liable under the Federal Tort Claims Act for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service. Without exception, the relationship of military personnel to the Government has been governed exclusively by Federal law. We do not think that Congress, in drafting this act, created a new cause of action dependent on local law for service-connected injuries or death due to negligence. We cannot impute to Congress such a radical departure from established law in the absence of express congressional command."

The compensation benefits that have been and are now being paid by the Veterans' Administration to Mr. Jefferson are not "negligible or niggardly," but are substantial. Informal advice received by this Department from the Veterans' Administration indicates that veterans' compensation at the rate of $193.50 per month as indicated in that Administration's letter of July 22, 1953, was continued through September 30, 1954; that, on October 1, 1954, the rate was increased to $202 per month, which Mr. Jefferson is currently receiving; and that the benefits paid to him through March 31, 1955, total approximately $18,000. The life expectancy of the average man of his age is 16 years. If Mr. Jefferson lives that long, he will have collected from the United States, on account of his service-connected disabilities, compensation aggregating at least $56,000.

In the light of the foregoing facts and the authorities herein cited, there is no legal or equitable basis for the granting of any additional compensation to this claimant on account of the disabilities incurred by him while he was in the Army. His original Veterans' Administration disability rating of 30 percent was increased to 100 percent, obviously as the result of the operation performed upon him on July 3, 1945, at Fort Belvoir, Va. The enactment of the present bill granting to him a special award of $20,000, in addition to the compensation which he has received, is now receiving and will continue to receive from the Veterans' Administration, would be highly discriminatory in that it would grant to this claimant a special benefit which is denied by general law to all other former servicemen in like circumstances.

It is noted by the committee that this matter was the subject of a suit in the United States District Court for the District of Maryland,

the United States Court of Appeals for the Fourth Circuit and the Supreme Court. A copy of the decision in the circuit court of appeals is attached hereto and made a part hereof. It is further noted that in that decision the court states as follows:

> It was found by Judge Chesnut at the trial in the district court, (77 F. Supp. 706), that a towel used during an operation had been left in a surgical wound through the negligence of Government employees at the hospital, and in consequence the plaintiff had suffered serious injuries for which $7,500 would be an appropriate verdict if the case were tenable. The judge held, however, that the statute was not intended to cover claims by members of the Armed Forces of the United States for service-connected injuries suffered while in service. He, therefore, dismissed the case on motion of the United States and this appeal followed.

The exact words of Judge Chesnut, in relation to this matter, appear in 77 Federal Supplement 710, and are as follows:

> From the evidence as a whole, despite the factual difficulties and uncertainties, I conclude that the facts justify the finding that the towel must have been placed in the plaintiff's abdomen or stomach at the time of the operation at Fort Belvoir as alleged; and the failure to remove it before closing the surgical wound was negligence on the part of agents or employees of the Government at the hospital. There was no evidence of any abdominal operation on the plaintiff other than those mentioned; and it is highly improbable that the towel could have been left in the plaintiff at the time of the kidney operation.
>
> I conclude also that if the plaintiff is entitled to recover at all in this case the actual and prospective payments made to him by the Veterans' Administration must be, as conceded by plaintiff's counsel, treated as diminution of the amount of the verdict; and in view of all the evidence in the case, including the plaintiff's various medical and surgical disabilities preceding the operation at Fort Belvoir, I would conclude that presently a sum of $7,500 would be an appropriate verdict.
>
> However, I conclude as a matter of law and for the reasons now to be stated, that the Federal Tort Claims Act does not cover this case of the plaintiff because it was a service-connected disability occurring while the plaintiff was an enlisted man in the United States Army and occurring as a result of negligence on the part of employees of the Government at the hospital.

The circuit court of appeals then went on to affirm the decision of the United States District Court for the District of Maryland.

The committee considered favorably what is believed to be ample precedent for the favorable consideration of this bill in two bills in the 83d Congress. The first was for the relief of Curtis W. Strong, being H. R. 3725, 83d Congress, which was approved by the President and became Private Law 418, 83d Congress, and the second was H. R. 5436, 83d Congress, for the relief of David Hanan, which was approved by the President and became Private Law 504, 83d Congress.

The committee after review of all of the foregoing, as a matter of law, is in agreement with the court decisions in this matter, but believes that as an equitable or honorable proposition some measure of recovery should be accorded this claimant. Unquestionably, the leaving of the towel in the open wound and sewing it in amounts to gross negligence for which, as far as the committee knows, other than by congressional relief, there is no recompense to be had. The committee is further of the conviction that there is an obligation to the claimant, and in view of the finding of Judge Chesnut while the case was before the United States district court, the committee is constrained to recommend that this claimant be reimbursed in the sum of $7,500 as suggested by Judge Chesnut, assuming the action to have been tenable and, therefore, recommends that S. 1143, as amended be considered favorably.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 5815

ARTHUR K. JEFFERSON, APPELLANT, *v.* UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, AT BALTIMORE—CIVIL

(Reargued November 8, 1949. Decided December 19, 1949)

Before PARKER, SOPER, and DOBIE, Circuit Judges

Morris Rosenberg (Robert H. Archer, Jr., on brief) for appellant, and Morton Hollander, attorney, Department of Justice (H. G. Morison, Assistant Attorney General; Bernard J. Flynn, United States attorney; James B. Murphy, assistant United States attorney; Paul A. Sweeney and Massillon M. Heuser, Attorneys, Department of Justice, on brief) for appellee.

SOPER, Circuit Judge:

This suit was brought by a member of the Armed Forces of the United States under the Federal Tort Claims Act (28 U. S. C. A. sec. 2674 et seq.), to recover for personal injuries resulting from a surgical operation performed by an Army surgeon at Fort Belvoir, Va. It was found by Judge Chesnut at the trial in the district court (77 F. Supp. 706), that a towel used during an operation had been left in a surgical wound through the negligence of Government employees at the hospital, and in consequence the plaintiff had suffered serious injuries for which $7,500 would be an appropriate verdict if the case were tenable. The judge held, however, that the statute was not intended to cover claims by members of the Armed Forces of the United States for service-connected injuries suffered while in the service. He therefore dismissed the case on motion of the United States and this appeal followed.

In the meantime, the Supreme Court, upon an appeal from this court, rendered its decision in *Brooks* v. *United States* (337 U. S. 49), in which it held that two soldiers riding in their own automobile while on leave were entitled to recover for injuries received when they were struck by a United States Army truck driven by a civilian employee of the Army. That decision established that members of the Armed Forces of the United States can recover under the Federal Tort Claims Act for injuries not incident to their service, but left open the question whether the statute also covers claims by servicemen for injuries incident to their service. The Court said (pp. 52–53):

"The Government envisages dire consequences should we reverse the judgment. A battle commander's poor judgment, an Army surgeon's slip of hand, a defective jeep which causes injury, all would ground tort actions against the United States. But we are dealing with an accident which had nothing to do with the Brooks' Army careers, injuries not caused by their service except in the sense that all human events depend upon what has already transpired. Were the accident incident to the Brooks' service, a wholly different case would be presented. We express no opinion as to it, but we may note that only in its context do *Dobson* v. *United States* (27 F. 2d 807), *Bradley* v. *United States* (151 F. 2d 742), and *Jefferson* v. *United States* (77 F. Supp. 706), have any relevance. (See the similar distinction in 31 U. S. C. sec. 223b.) Interpretation of the same words may vary, of course, with the consequences, for those consequences may provide insight for determination of congressional purpose. *Lawson* v. *Suwannee Fruit & Steamship Co.* (336 U. S. 198). The Government fears may have point in reflecting congressional purpose to leave injuries incident to service where they were, despite literal language and other considerations to the contrary. The result may be so outlandish that even the factors we have mentioned would not permit recovery. But that is not the case before us."

Since this decision was rendered, the question not decided by the Supreme Court has been considered in the second and tenth circuits which came to opposite conclusions. In *Feres, Ex'r* v. *United States* (2 Cir., decided November 4, 1949), it was held that the estate of an Army officer killed in a fire in unsafe Army barracks in which he had been quartered through the negligence of superior officers was not entitled to recovery for his death; but in *Griggs, Ex'r* v. *United States* (10 Cir., November 16, 1949), it was held that the estate of an Army officer could recover under the act for his wrongful death caused by the negligence of members of the Army Medical Corps while he was under medical treatment. The second circuit based its decision largely upon the provision which Congress has made for

military persons in the form of disability payments and pensions. The tenth circuit found more persuasive the broad language of the statute and the fact that Congress failed to except service-connected injuries of military personnel although bills containing such exceptions had been presented for its consideration.

We are in accord with the conclusions reached by the second circuit. The choice lies between a literal interpretation of the act and a construction which recognizes the peculiar relationship that exists between a member of the armed services and superior military authority. Congress was plainly impressed with the large number of justified complaints on the part of persons injured through the negligence of employees engaged in the manifold activities of the Federal Government, and found it desirable to modify the Government immunity from suit and to give relief to injured persons through the procedure of the courts rather than through private statutes which burdened the legislative branch of the Government and caused delay in the consideration of complaints. Hence the Federal Tort Claims Act was passed. It seems unreasonable, however, to conclude that Congress, while accomplishing these desirable purposes, intended at the same time to subject every injury sustained by a member of the Armed Forces in the execution of military orders to the examination of a court of justice if the injured person should make the claim that his injury was caused by the negligence of a superior officer. If this were so, the civil courts would be required to pass upon the propriety of military decisions and actions and essential military discipline would be impaired by subjecting the command to the public criticism and rebuke of any member of the Armed Forces who chose to bring a suit against the United States. We think this consideration too weighty to be swept aside by adverting to the exceptions relating to military personnel which were contained in bills submitted to Congress when the matter was under examination. When a statute is subjected to the interpretation of the courts, too much weight should not be given to the language contained in discarded measures or to the statements of legislators in the course of debate. *Order of Conductors* v. *Swan* (329, U. S. 520, 529), *Jewell Ridge Corp.* v. *Local* (325 U. S. 161, 168).

This conclusion is fortified by the considerations enumerated and relied on in the opinion of Judge Chesnut and that of the second circuit in the Feres case. The distinctively Federal character of the Government-soldier relationship is recognized in *United States* v. *Standard Oil Co.* (322 U. S. 301, 305), where the extent to which State law may govern the relationship between military personnel and persons outside the Military Establishment was contrasted with the complete subjection to Federal authority of the relationship between persons in the military service and the Government itself. That State law governs in suits under the Federal Tort Claims Act is shown by the provision that the United States is liable for injuries caused by the negligence of a Government employee acting within the scope of his employment under circumstances where a private person would be liable to the claimant under the law of the place where the act of omission occurred; but it is not reasonable to suppose, in the absence of an express declaration on the point, that Congress intended to adopt so radical a departure from its historic policy as to subject internal relationships within the Military Establishment to the law of negligence as laid down by the courts of the several States.

The serviceman is not left without protection by the interpretation of the statute, for as pointed out in the opinion of the district court (76 Fed. Supp. 711, note 1), Congress has long had in mind the peculiar dangers to which the military man is exposed, and has accordingly made elaborate provisions for pay and allowances and retirement benefits for persons in the Army and the Navy, in addition to medical and hospital treatment, which are always available. An analogous situation in suits by seamen against the United States under the Public Vessels Act led the court to decide that the permission granted to persons to libel the United States in personam for damages caused by the negligent handling of a public vessel refers to damages suffered by third persons but not by members of the ship's company. *Dobson* v. *United States* (2 Cir., 27 F. 2d 807); *Bradey* v. *United States* (2 Cir., 151 F. 2d 742).

Affirmed.

UNITED STATES SENATE,
December 30, 1955.

HON. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: On February 21, 1955, I introduced Senate bill 1143, for the relief of Arthur K. Jefferson, whose claim arises out of the fact that Army doctors

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during an abdominal operation left a towel 2½ feet long by 1½ feet wide, bearing the legend, "Medical Department U. S. Army," in Jefferson's stomach. As a result of this negligent act, Mr. Jefferson's health has been permanently impaired.

Section 131 of the Legislative Reorganization Act of 1946 bans the introduction of private bills in Congress over which Federal courts have jurisdiction under provisions of the Federal Tort Claims Act. In this instance, however, the Federal courts have determined that they do not have jurisdiction over Jefferson's claim under the Tort Claims Act (see *Jefferson* v. *United States*, 77 Fed. Sup. 706, 178 Fed. 2d 518, 340 U. S. 135).

During recent years, Congress has considered several claims similar to Jefferson's involving the negligence of military surgeons in leaving various articles in patients during operations, and a mere statement of the circumstances forming the basis of the claim, in my opinion, is sufficient to indicate that Jefferson is entitled to relief. But for the lack of jurisdiction, Jefferson would have recovered in the district court. In connection with the equities of this particular claim, Judge Chesnut as dictum in *Jefferson* v. *United States* (77 Fed. Sup. 706, at 710) stated:

"I conclude also that if the plaintiff is entitled to recover at all in this case the actual and prospective payments made to him by the Veterans' Administration must be, as conceded by plaintiff's counsel, treated as diminution of the amount of the verdict; and in view of all the evidence in the case, including the plaintiff's various medical and surgical disabilities preceding the operation at Fort Belvoir, I would conclude that presently a sum of $7,500 would be an appropriate verdict."

As Judge Chesnut outlined in that portion of his decision, quoted above, Jefferson is presently receiving Veterans' Administration disability payments. Judge Chesnut's statement concerning diminution of the amount of the verdict is in accord with the recent Supreme Court decision in *United States* v. *Brown*, (348 U. S. 110, see note p. 111).

On the basis of the foregoing factors, I strongly believe that this is a just and equitable claim and one which merits the consideration of Congress. I will deeply appreciate your cooperation in assuring early committee consideration of this claim.

Sincerely yours,

JOHN M. BUTLER,
United States Senator.

APRIL 27, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR KILGORE: Further reference is made to your letter requesting a report by the Veterans' Administration relative to S. 1143, 84th Congress, a bill for the relief of Arthur K. Jefferson, which provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Arthur K. Jefferson, of Baltimore, Md., the sum of $20,000 for compensation for permanent injuries sustained by him as the result of an operation performed on him on July 3, 1945, at the Fort Belvoir Hospital, Va., while a member of the United States Army, in which a United States Army Medical Department towel was negligently left in his stomach and so remained until discovered and removed during a subsequent operation on March 13, 1946.

"SEC. 2. The sum appropriated by this act to the said Arthur K. Jefferson shall be in addition to any benefits to which he is entitled under the laws providing benefits for veterans.

"SEC. 3. No part of the amount appropriated in this act in excess of 10 percent thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisons of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000."

The records disclose that Arthur Knud Jefferson (C–6021497) entered on active duty with the Army of the United States on October 22, 1942. While in service on March 5, 1943, his right kidney was removed. In 1945, he was hospitalized for lengthy periods for an ill-defined condition of the gastrointestinal system. On July 3, 1945, a cholecystostomy was performed in the Army hospital at Fort Belvoir, Va., with a resulting pathological diagnosis of chronic cholecystitis.

Mr. Jefferson was discharged from service on January 9, 1946, for the convenience of the Government. The physical examination at time of discharge listed the 1943 and 1945 operations, disclosed scars over the right kidney and gall-bladder area, and stated that the abdominal wall and viscera were normal.

Reports from Ned O. Hodous, M. D., and Johns Hopkins Hospital, Baltimore, Md., indicate that following the 1945 operation, Mr. Jefferson had numerous spells of nausea and upper abdominal pain. In December 1945, he began to vomit occasionally. On February 27, 1946, he was furnished medication on an outpatient basis at the Veterans' Administration regional office, Baltimore, Md. On March 8, 1946, Dr. Hodous, his private physician, sent him to Johns Hopkins Hospital. A report from that hospital discloses that 5 days later an exploratory laporotomy was performed. The report states, in part, that during the course of the operation, a face towel bearing the mark of the Medical Department of the United States Army was removed from the patient's stomach. Mr. Jefferson was discharged from the hospital on April 16, 1946. During the ensuing 7 months, he received outpatient treatment at the dispensary of Johns Hopkins Hospital on numerous occasions.

Following the mentioned hospitalization, the veteran filed claims with the Veterans' Administration for reimbursement of the expenses that he had incurred. With the exception of the sum of $36.90 which did not meet the requirements of law governing the reimbursement of unauthorized medical expenses, the Veterans' Administration approved for payment all of Mr. Jefferson's claims for treatment by Dr. Hodous; hospitalization at Johns Hopkins Hospital; outpatient treatments at the hospital; medicines and dressings; and transportation to and from the hospital.

In addition, it may be noted that since the conclusion of his treatment at Johns Hopkins Hospital, Mr. Jefferson has on numerous occasions been examined or treated for his service-connected disabilities at the expense of the Government. These include several periods of hospitalization at either the Veterans' Administration Hospital, Fort Howard, Md., or the United States Marine (Public Health Service) Hospital, Baltimore, Md., where he was hospitalized as a Veterans' Administration beneficiary.

At the time of his discharge from service, the veteran filed an application with the Veterans' Administration for the payment of compensation for service-connected disabilities described as kidney operation, drained gall bladder, and hemorrhoids. Based on his inservice medical records, he was found, in a rating decision of March 11, 1946, to be 30 percent disabled as the result of the surgical loss of his right kidney, on the basis of which he was awarded compensation of $34.50 per month, effective January 10, 1946, the day following the date of his discharge from service. The condition of scar, postoperative, parcentesis of gall bladder, nonfunctioning, was found to be 0 percent disabling. On June 7, 1946, following receipt of the report from John Hopkins Hospital, the 30 percent rating for the loss of his right kidney was continued and he was also found to be 50 percent disabled because of adhesions, peritoneal, secondary to service surgery, with multiple intestinal resections following removal of a retained foreign body in the stomach. While these ratings combine to only 70 percent, the evidence showed that he was unemployable which accordingly warranted a total disability rating. The veteran was granted compensation for total disability, in the amount of $115 per month, effective the day following the date of his discharge from service.

Mr. Jefferson was examined by the Veterans' Administration on July 31, 1947. As a result of that examination the previous disability ratings were continued and a rating of 40 percent was assigned, predicated on a postoperative ventral hernia. The total disability rating was continued on account of his unemployability. Further consideration was given the case on October 11, 1948, at which time he was found to be 100 percent disabled on a factual basis as the result of hernia, ventral, postoperative, severe, with intraperitoneal adhesions, secondary to surgery (drainage of gall bladder, removal of hand towel from abdomen, and drainage of multiple abdominal wall abscesses). The 30 percent disability rating for removal of his kidney was continued. The veteran's case has since been considered on several occasions, the total disability rating being continued each time. Under existing law and regulations, no further examination of the veteran is considered necessary and he will accordingly be entitled to compensation for total disability on a continuing basis. Based on the foregoing ratings, Mr. Jefferson has, since discharge, received monthly compensation payments ranging from $115 to his current award of $202, which includes $21 per month payable because of his wife.)

Further, based on his application for a waiver of payment of premiums on his $10,000 national service life insurance, Mr. Jefferson has been found to have been

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totally disabled for insurance purposes from and after February 20, 1945, and accordingly the premiums on his insurance contracts were waived from and after March 1, 1945. That waiver of payment of insurance premiums continues at the present time.

In July 1947, Mr. Jefferson filed suit for $100,000 against the United States in the United States District Court for the District of Maryland, pursuant to the provisions of the Federal Tort Claims Act (60 Stat. 842), for damages allegedly sustained by him as the result of the towel having been negligently left in his abdomen during the 1945 operation. The case was tried on the merits, and thereafter, the district court, by decision dated May 7, 1948 (77 F. Supp. 706), dismissed the suit on the ground that the United States was not liable for damages under the Federal Tort Claims Act, for service-connected injuries sustained by a member of the Armed Forces of the United States. That decision was affirmed by the United States Court of Appeals for the Fourth Circuit on December 19, 1949 (178 F. 2d 518).

The Supreme Court of the United States granted a writ of certiorari in this case. The case was combined with 2 other cases brought up under the Federal Tort Claims Act for damages on account of the death of 2 servicemen, and the 3 cases were disposed of in the same opinion (*Feres* v. *U. S.*, 340 U. S. 135, 95 L. Ed. 152). The Supreme Court concluded that the Government was not liable under the Federal Tort Claims Act for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service. The decision in the Jefferson case was accordingly affirmed.

The bill proposes to pay Mr. Jefferson $20,000 for compensation for permanent injuries sustained by him as the result of the operation performed on him on July 3, 1945. The $20,000 would be in addition to any benefits to which the veteran is entitled under laws providing benefits for veterans. The bill does not disclose the nature of the permanent injuries for which it proposes to compensate him. The Veterans' Administration compensation awards, beginning the day following the date of Mr. Jefferson's discharge from service, reflect the extent of his service-connected disabilities, including all disabilities resulting from the July 3, 1945 operation, mentioned in the bill. In this connection it should be noted that for Veterans' Administration rating purposes it is not necessary that a specific determination be made whether any disability resulted from negligence during that operation; it is sufficient that the evidence shows that the veteran's disability resulted from disease or injury incurred in or aggravated by his active military service in line of duty.

The circumstances of this case have been carefully considered and no reason is apparent why it should be accorded special legislative treatment. To single out this veteran by awarding him, for certain of his service-connected disabilities, the lump-sum payment proposed by the bill in addition to the compensation payable for such disabilities under public law would be discriminatory against others who may be similarly situated and might prove to be a costly precedent.

Since the bill states that the injuries were sustained by Mr. Jefferson as the result of an operation at Fort Belvoir, Va., it is assumed that your committee will obtain the views of the Secretary of Defense concerning S. 1143.

The Veterans' Administration does not believe that private bills of this nature should receive favorable consideration.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report to your Committee.

Sincerely yours,

JOHN S. PATTERSON,
Deputy Administrator,
(For and in the absence of the Administrator).

JUNE 8, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to S. 1143, 84th Congress, a bill for the relief of Arthur K. Jefferson.

The Department of the Army is opposed to the above-mentioned bill.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Arthur K. Jefferson,

of Baltimore, Md., the sum of $20,000 for compensation for permanent injuries sustained by him as the result of an operation performed on him on July 3, 1945, at the Fort Belvoir Hospital, Va., while a member of the United States Army, in which a United States Army Medical Department towel was negligently left in his stomach and so remained until discovered and removed during a subsequent operation on March 13, 1946.

"SEC. 2. The sum appropriated by this act to the said Arthur K. Jefferson shall be in addition to any benefits to which he is entitled under the laws providing benefits for veterans."

The records of the Department of the Army show that Arthur K. Jefferson, who had been an aviation mechanic at the Glenn L. Martin Co., enlisted in the Army of the United States on October 22, 1942 and was assigned Army Serial No. 13135713; that at the time of his enlistment he was 45 years of age; that he had previously had an abdominal operation for appendicitis from which he had apparently recovered; that about 5 months after enlisting, and while in the Army, an abdominal operation was performed on him in an Army hospital at Indiantown Gap, Pa., during which one of his kidneys was removed; that from January 19, 1943, to May 17, 1943, he had various medical complaints diagnosed as hydronephrosis; that a subsequent diagnosis of herpes of the lower lip was reported cured on February 7, 1943; that on February 19, 1943, a further diagnosis of this soldier indicated pleurisy, which was reported cured on March 3, 1943; that from February to April 1945 he had an ill-defined condition of the gastrointestinal system, including vomiting, with nonfunctioning gall bladder; that on July 3, 1945, he was operated on for cholecystostomy in the Army hospital at Fort Belvoir, Va., by the chief surgeon at said hospital, and that he was honorably discharged from the Army on January 9, 1946.

A few days after his discharge from the Army Mr. Jefferson filed a formal application with the Veterans' Administration for compensation on account of service-connected disability. On March 18, 1946, the Veterans' Administration awarded to the claimant disability compensation in the amount of $34.50 per month, retroactively to January 10, 1946 (the day following the date of his discharge from the Army), upon a service-connected disability rating of 30 percent on account of the surgical removal of a kidney while he was in the military service.

Around the end of February 1946 Mr. Jefferson began to suffer from vomiting spells and nausea, which grew increasingly more severe until March 8, 1946, when he went to the Johns Hopkins University Hospital in Baltimore, Md., for treatment. On March 13, 1946, he was operated on at said hospital. The operating surgeon found a well-healed medical scar in the front of the abdomen, through which he operated. During the course of such operation the surgeon found a towel in the lower part of Mr. Jefferson's stomach which had partly worked into the duodenum. The towel was removed, measured, and photographed. It was 30 inches long by 18 inches wide and was marked "Medical Department U. S. Army." After this operation Mr. Jefferson was treated at the United States Marine Hospital in Baltimore, medically and surgically. It was found that he had sustained a serious hernia, which was attributed to the aftereffects of the operation performed on him at the Johns Hopkins University Hospital and thought to have been caused by inflammation or infection as a postoperative result of the removal of the towel.

The Department of the Army has been advised by the Veterans' Administration that on June 7, 1946, the compensation of Mr. Jefferson was increased to $115 per month, retroactively to January 10, 1946 (less the prior payments that had been made to him at the rate of $34.50 per month), upon a disability rating of 100 percent. In a letter to the Department of the Army, dated July 22, 1953, the Veterans' Administration further advised with respect to this claimant as follows:

"The veteran's compensation was increased from $115 monthly to $138 monthly from September 1, 1946, under Public Law 662, 79th Congress, and further increased to $159 monthly from September 1, 1948, under Public Law 877, 80th Congress, which legislation authorized the payment of additional compensation for his wife. Under Public Law 339, 81st Congress, his payments were increased to $171 monthly from December 1, 1949. They were reduced to $150 monthly from September 14, 1951, on account of the death of his wife, and increased to $171 monthly from March 6, 1952, on the basis of remarriage. His compensation was further increased to $193.50 monthly effective July 1, 1952, under Public Law 356, 82d Congress, and he is being paid this monthly rate of compensation at this time. Estimated from the awards in file, this veteran is shown to have received compensation to date of approximately $14,000."

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In September 1947 Mr. Jefferson filed a suit against the United States in the United States District Court for the District of Maryland (Civil Action No. 3692) in which he prayed for a judgment against the Government under the Federal Tort Claims Act in the amount of $100,000 and costs for the damages sustained by him as the result of a towel having been left in his abdomen at the time he was operated on in an Army hospital on July 3, 1945. After a trial of this case on the merits the district court dismissed the suit on the ground that the United States was not liable in damages under the Federal Tort Claims Act in a suit of this character for service-connected injuries sustained by a member of the Armed Forces of the United States (*Jefferson* v. *United States*, 77 F. Supp. 706). The district court in its opinion on the case held, in pertinent part, as follows (p. 711):

"* * * the Federal Tort Claims Act does not cover this case of the plaintiff because it was a service-connected disability occurring while the plaintiff was an enlisted man in the United States Army and occurring as a result of negligence on the part of employees of the Government at the hospital."

The decision of the district court dismissing the suit of Mr. Jefferson was affirmed by the United States Court of Appeals for the Fourth Circuit (*Jefferson* v. *United States*, 178 F. 2d 518). The Supreme Court of the United States granted a writ of certiorari to review the decision in this case. It also granted writs of certiorari to review the decisions of other lower Federal courts in 2 other cases brought under the Federal Tort Claims Act for damages on account of the death of 2 servicemen, who allegedly lost their lives as the result of negligence on the part of military personnel while in the performance of their official duties. The three cases were heard together and disposed of in the same opinion by the Supreme Court (*Feres* v. *United States*, 340 U. S. 135). The Supreme Court, in holding that no recovery could be had in any of said cases, said (pp. 144–146):

"No Federal law recognizes a recovery such as claimants seek. * * *

"This Court, in deciding claims for wrongs incident to service under the Tort Claims Act, cannot escape attributing some bearing upon it to enactments by Congress which provide systems of simple, certain, and uniform compensation for injuries or death of those in armed services. * * *

"A soldier is at peculiar disadvantage in litigation. Lack of time and money, the difficulty if not impossibility of procuring witnesses, are only a few of the factors working to his disadvantage. * * * The compensation system, which normally requires no litigation, is not negligible or niggardly, as these cases demonstrate. The recoveries compare extremely favorably with those provided by most workmen's compensation statutes. * * *

"We conclude that the Government is not liable under the Federal Tort Claims Act for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service. Without exception, the relationship of military personnel to the Government has been governed exclusively by Federal law. We do not think that Congress, in drafting this act, created a new cause of action dependent on local law for service-connected injuries or death due to negligence. We cannot impute to Congress such a radical departure from established law in the absence of express congressional command."

The compensation benefits that have been and are now being paid by the Veterans' Administration to Mr. Jefferson are not "negligible or niggardly," but are substantial. Informal advice received by this Department from the Veterans' Administration indicates that veterans' compensation at the rate of $193.50 per month as indicated in that Administration's letter of July 22, 1953, was continued through September 30, 1954; that, on October 1, 1954, the rate was increased to $202 per month, which Mr. Jefferson is currently receiving; and that the benefits paid to him through March 31, 1955, total approximately $18,000. The life expectancy of the average man of his age is 16 years. If Mr. Jefferson lives that long, he will have collected from the United States, on account of his service-connected disabilities, compensation aggregating at least $56,000.

In the light of the foregoing facts and the authorities herein cited, there is no legal or equitable basis for the granting of any additional compensation to this claimant on account of the disabilities incurred by him while he was in the Army. His original Veterans' Administration disability rating of 30 percent was increased to 100 percent, obviously as the result of the operation performed upon him on July 3, 1945, at Fort Belvoir, Va. The enactment of the present bill granting to him a special award of $20,000, in addition to the compensation which he has received, is now receiving and will continue to receive from the Veterans' Administration, would be highly discriminatory in that it would grant to this claimant a special benefit which is denied by general law to all other former servicemen in

like circumstances. The Department of the Army, therefore, while deeply regretting the fact that the claimant incurred disability while in the military service, is obliged to recommend that this bill be not favorably considered by the Congress.

A similar report was rendered by this Department on H. R. 4239, 83d Congress, a bill for the relief of Arthur K. Jefferson, upon which no action was taken by the Congress.

The cost of this bill, if enacted, will be $20,000.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

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Calendar No. 1830

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1806

MRS. SYLVIA SIMONSON

APRIL 23 (legislative day, APRIL 9), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1178]

The Committee on the Judiciary, to which was referred the bill (S. 1178) for the relief of Mrs. Sylvia Simonson, having considered the same, reports favorably thereon.

AMENDMENT

On page 2, lines 3 and 4, strike the words "in excess of 10 per centum thereof".

PURPOSE OF AMENDMENT

The purpose of the proposed amendment is to eliminate the payment of attorneys' fees in connection with the award provided in this legislation. The committee has been informed that no attorney or agent has rendered services sufficient to qualify for payment of a fee.

PURPOSE

The purpose of the proposed legislation, as amended, is to pay to Mrs. Sylvia Simonson, of Spokane, Wash., $5,000 in full settlement of all claims against the United States for personal injuries and medical and hospital expenses sustained as a result of an accident while directly serving the Armed Forces as an instructor-pilot for the training school rendering training instruction to the 319th College Training Detachment, Pullman, Wash., on December 28, 1943.

STATEMENT

On December 27, 1943, the Wallace Air Service, Inc., of Spokane, Wash., was a private corporation engaged in the business of providing

flying instructions to enlisted personnel of the 319th Training Detachment stationed at Pullman, Wash. This training was done under a contract with the Army Air Forces. The claimant, Mrs. Sylvia Simonson, was employed by said corporation as a flight instructor, and on December 27, 1943, at about 8:30 a. m., while flying a training plane near the Pullman-Moscow Regional Airport, Mrs. Simonson was obliged to parachute from her plane. The descent of the parachute was witnessed by one Stanley O. Olinger, the pilot of another plane operated by the Wallace Air Service, Inc. When the parachute reached the ground, Mrs. Simonson did not arise; whereupon, Mr. Olinger promptly landed his plane in a nearby field to determine if the parachutist had landed safely. There was a strong wind blowing, and it was discovered that Mrs. Simonson was dragged by her parachute for approximately one-half mile before it was brought to a stop by Mr. Olinger. Mrs. Simonson was in an unconscious condition and had sustained a serious scalp injury. She was then taken to the Finch Memorial Hospital at Pullman, Wash., where she was given emergency treatment, and she was subsequently hospitalized and treated in various hospitals.

The cause of the parachuting appears to have been necessitated by reason of fire discovered on the plane. At the time, Mrs. Simonson had a student with her. She instructed him how to operate his parachute; had him get on the wing, and pushed him off, so that he landed safely. It was after this that she herself left the plane.

As a result of the dragging, her scalp was torn from her head, having been broken just above the eyebrows, and the entire scalp, skin, and hair were torn loose.

The wind velocity was checked by a pilot who was nearby and it was reported to have been at 26 to 27 miles an hour, with strong gusts.

Previously, Mrs. Simonson had applied for a release as a flight instructor in order to go into WASP training in 1944. This application for release was still pending at the time of the accident, so that she was practically frozen on this particular job.

In an affidavit signed by her, it is stated that she has spent approximately $5,000 for expenses as a result of this accident.

The commanding general, Sixth Army, San Francisco, Calif., in his report to the Department of the Army, states as follows:

> * * * Mrs. Simonson was not an employee of the United States at the time of the accident but was employed by an independent contractor. There is no evidence of any negligence on the part of the United States and it appears that the injuries were a direct result of Mrs. Simonson's lack of skill in making a parachute landing.

The Department of the Army in its report dated April 9, 1951, states as follows:

> Mrs. Simonson was neither a member of the Army nor a civilian employee of the United States at the time of her injury, but was an employee of a private corporation engaged in the business of such corporation. The United States is not an insurer against the hazards that an employee may be subjected to while in the course of his employment with a private corporation engaged in work under a Government contract. When such an employee is injured while in the course of his employment he has no legal or moral claim against the United States unless it is shown that his injury was caused by the negligent or wrongful act or omission of an employee of the United States while acting within the scope of his employment.
>
> Inasmuch as the injury or Mrs. Simonson was not caused by any negligent or wrongful act or omission on the part of any officer, agent, or employee of the

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United States, there is no justifiable basis for the enactment of this bill. Furthermore, the enactment of this bill would constitute discriminatory legislation in that it would grant to this claimant a special benefit not granted by general law to other persons who have suffered disabilities under similar circumstances. The Department of the Army, therefore, is obliged to recommend that this bill be not favorably considered.

The committee, from the facts, does not agree with the finding of the commanding general of the Sixth Army to the effect that Mrs. Simonson's lack of skill in parachuting was the proximate cause of the accident, and does not enjoin therein.

It is apparent that as a matter of law, liability on the part of the United States Government is not indicated, as there does not seem to be any act of negligence or omission of duty attributable which would render the Government liable. However, it must be remembered that there was a war in progress when this accident occurred and that the claimant was engaged in providing flying instructions to the 319th Training Detachment stationed at Pullman, Wash. Mrs. Simonson was severely injured in this accident and the sole question involved is whether, as a matter of moral justice, the Government should not contribute to the claimant rather than allow her to assume the entire burden of these injuries.

It appears that as a matter of law the claimant has no redress, but at this point it would be well to note the holding of the Supreme Court of the United States in *United States* v. *Realty Company* (163 U. S. 427). In that case the Court in its opinion stated, in part, as follows:

> Under the provisions of the Constitution (art. 1, sec. 8) Congress has power to lay and collect taxes, etc., "to pay the debts" of the United States. Having power to raise money for that purpose, it of course follows that it has power when the money is raised to appropriate it to the same object. What are the debts of the United States within the meaning of this constitutional provision? It is conceded, and indeed it cannot be questioned, that the debts are not limited to those which are evidenced by some written obligation or to those which are otherwise of a strictly legal character. The term "debts" includes those debts or claims which rest upon a merely equitable or honorary obligation, and which would not be recoverable in a court of law if existing against an individual. The Nation, speaking broadly, owes a "debt" to an individual when his claim grows out of general principles of right and justice; when, in other words, it is based upon considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a court of law. The power of Congress extends at least as far as the recognition and payment of claims against the Government which are thus founded. To no other branch of the Government than Congress could any application be successfully made on the part of the owners of such claims or debts for the payment thereof. Their recognition depends solely upon Congress, and whether it will recognize claims thus founded must be left to the discretion of that body. Payments to individuals, not of right or of a merely legal claim, but payments in the nature of a gratuity, yet having some feature of moral obligation to support them, have been made by the Government by virtue of acts of Congress, appropriating the public money, ever since its foundation. Some of the acts were based upon considerations of pure charity. A long list of acts directing payments of the above general character is appended to the brief of one of the counsel for the defendants in error. The acts are referred to, not for the purpose of asserting their validity in all cases, but as evidence of what has been the practice of Congress since the adoption of the Constitution.

From the foregoing, it can be seen that the term "debts" includes those debts or claims which rest upon only a merely equitable or honorary obligation and need not be founded as a matter of law. The Court goes as far as to say that a debt of merely an honorary

nature which is binding upon the conscience or honor of an individual, although the debt could obtain no recognition in a court of law, nevertheless falls under the classification of a debt which can validly be considered by the Congress. The Court further states that the recognition of such debts depends solely upon the Congress, and whether it will recognize claims thus founded must be left to the discretion of that body.

The committee after discussion of the claim, reaches the conclusion that there exists an obligation upon the part of the United States Government to contribute a share to this claimant. Although this claim has no standing in a court of law or equity under the Realty Case, supra, it may be based upon considerations of moral or merely honorary nature such as are binding upon the conscience or honor of an individual although the debt would obtain no recognition in a court of law. The set of circumstances as set forth in this case is, in the opinion of the committee, one of those situations in which such a moral and honorable obligation exists. In view of the foregoing, the committee recommends the bill, S. 1178, for favorable consideration to the Senate.

Attached hereto and made a part hereof are copies of the letters and documents contained in House Report No. 29, on H. R. 1636, a similar bill of the 83d Congress.

APRIL 9, 1951.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CELLER: The Department of the Army is opposed to the enactment of H. R. 1825, 82d Congress, a bill for the relief of Mrs. Sylvia Simonson.

This bill would authorize and direct the Secretary of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, the sum of $10,000 to Mrs. Sylvia Simonson, of South 809 Freya Street, Spokane, Wash., in full settlement of all claims against the United States for personal injuries and medical and hospital expenses sustained as a result of an accident while directly serving the Armed Forces as an instructor pilot for the training school rendering training instruction to the 319th College Training Detachment, Pullman, Wash., on December 28, 1943.

An investigation by the military authorities in the field discloses that the accident referred to in this bill as having occurred "on December 28, 1943," actually occurred on December 27, 1943. On the last-mentioned date and for some time prior thereto the Wallace Air Service, Inc., of Spokane, Wash., a private corporation, was engaged in the business of giving flying instruction to enlisted men of the 319th Training Detachment, Pullman, Wash., under a contract with the Army Air Forces. Mrs. Sylvia Simonson was employed by said corporation as a flight instructor. On December 27, 1943, at about 8:30 a. m., while flying a training plane near the Pullman-Moscow Regional Airport, Mrs. Simonson parachuted from her plane. Mrs. Simonson's parachute appears to have opened properly after she jumped from the plane. Such parachute was observed descending toward the ground by Stanley O. Olinger, the pilot of another plane operated by the Wallace Air Service, Inc. However, when the parachute reached the ground Mrs. Simonson did not arise. Mr. Olinger thereupon promptly landed his plane on a nearby field to see if the parachutist had landed safely. Due to a strong wind Mrs. Simonson was dragged by her parachute for approximately one-half of a mile before it was brought to a stop by Mr. Olinger. Mrs. Simonson was found by him to be in an unconscious condition and to have sustained a serious scalp injury. She was taken to the Finch Memorial Hospital at Pullman, Wash., where she was given emergency treatment. She was subsequently hospitalized and treated in various hospitals.

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A search of the records of the Department of the Army fails to disclose that any claim was ever filed by Mrs. Simonson for damages on account of her injury on December 27, 1943, and the Department is not advised as to the amount of the medical and hospital expenses incurred by her on account of her injury.

In a report to the Department of the Army concerning this accident, dated August 2, 1949, the commanding general, Sixth Army, San Francisco, Calif., stated:

"* * * Mrs. Simonson was not an employee of the United States at the time of the accident but was employed by an independent contractor. There is no evidence of any negligence on the part of the United States and it appears that the injuries were a direct result of Mrs. Simonson's lack of skill in making a parachute landing."

Mrs. Simonson was neither a member of the Army nor a civilian employee of the United States at the time of her injury, but was an employee of a private corporation engaged in the business of such corporation. The United States is not an insurer against the hazards that an employee may be subjected to while in the course of his employment with a private corporation engaged in work under a Government contract. When such an employee is injured while in the course of his employment he has no legal or moral claim against the United States unless it is shown that his injury was caused by the negligent or wrongful act or omission of an employee of the United States while acting within the scope of his employment.

Inasmuch as the injury of Mrs. Simonson was not caused by any negligent or wrongful act or omission on the part of any officer, agent, or employee of the United States, there is no justifiable basis for the enactment of this bill. Furthermore, the enactment of this bill would constitute discriminatory legislation in that it would grant to this claimant a special benefit not granted by general law to other persons who have suffered disabilities under similar circumstances. The Department of the Army, therefore, is obliged to recommend that this bill be not favorably considered.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ARCHIBALD S. ALEXANDER,
Acting Secretary of the Army.

WAR DEPARTMENT,
HEADQUARTERS OF THE ARMY AIR FORCES,
Washington, December 24, 1943.

MRS. SLYVIA E. SIMONSON: Reference is made to your application for entrance to WASP training.

All necessary papers in connection with your application received from you in this headquarters are in order. However, since you are presently employed in an essential war industry, it is requested you furnish this office with a letter of release.

If you are interested in a possible opening in the class entering training February 13 and will so advise us, it is suggested that you arrange with the flight surgeon to have your medical examination taken immediately, if you have not already done so.

Upon successful completion of your medical examination, and final clearance of all your papers in this headquarters, official instructions when and where to report will be forwarded you. Do not leave home until you have received them.

Very truly yours,

JACQUELINE COCHRAN,
Director of Women Pilots.

WAR DEPARTMENT,
HEADQUARTERS OF THE ARMY AIR FORCES,
Washington, January 26, 1944.

Mr. FRANK G. SIMONSON:
Pullman-Moscow Regional Airport,
Pullman, Wash.

DEAR MR. SIMONSON. Your letter of January 23, 1944, has been received stating that your wife will not be able to enter WASP training due to an airplane accident.

I was very sorry to learn of her sad experience which will keep her from entering flying training at Avenger Field in Sweetwater, Tex., but hope that by this time her condition is very much improved.

Please convey to her my best wishes for a speedy recovery.

Sincerely yours,

JACQUELINE COCHRAN,
Director of Women Pilots.

Form ACA–116 (Revised July 7, 1943).
7–130–619.

DEPARTMENT OF COMMERCE, CIVIL AERONAUTICS ADMINISTRATION, WAR TRAINING SERVICE, WASHINGTON, D. C.

Date 12/2/43.

Request for release from war training service flight instruction contractor

PART I. REQUEST FOR RELEASE

(To be executed by the flight instruction contractor employee requesting release)

1. I, Simonson, Sylvia E. Johnson, permanent address: 412 Bank St., Wallace, Idaho, enlisted in _____ on _____ (day) _____ (month) _____ (year), hereby request release from CAA–WTS for the purpose of call to active duty in the (specify where, in what branch of the armed forces, and in what capacity): Unconditional release without prejudice, or for a release to _____ (Agency or Organization) _____ (Address)

2. I am (cross out two not applicable): Flight instructor; ~~Mechanic; Apprentice Mechanic.~~

3. (If Flight Instructor): I hold Pilot's Certificate No. C 86795–41; (Class—Commercial. Rating held FI 0–80 h. p. My total logged flying time is 915 hours (hours last 12 mo. 585).

I have instructed in the following CAA–WTS programs: Elementary (No. of Sessions): 8. Link Instrument (No. of Sessions): _____. Secondary (No. of Sessions): _____. Elementary Instr. (No. of Sessions): _____. Cross Country (No. of Sessions): _____. Secondary Instr. (No. of Sessions): _____.

4. If Aircraft and/or Engine Mechanic: License No. _____. Total years of experience: _____.

5. If Apprentice Mechanic: No. of months of apprenticeship _____.

6. I certify I was born 7 July 1916, Imbler, Oregon. Age at present, 27.

7. My education has been as follows (Include name and location of last school or college attended, date of withdrawal, whether graduated and if not, highest year completed and any degrees reeceived): La Grande, Oregon High School (graduated), 1944, Northwestern Business College, 1934.

SYLVIA J. SIMONSON,
(Signature of Applicant).

PART II. REPLACEMENT: INSTRUCTOR, MECHANIC, OR APPRENTICE MECHANIC

(To be executed by employer of CAA–WTS personal)

The replacement recorded below is available to permit the release of applicant.

Name _____ (Last) (First) (Middle) Date available _____

Permanent Address _____

Pilot or Mechanic Certificate No. _____ Class _____

Rating held _____ (Horsepower) Enlistment number _____

Branch of Service _____

Date _____

_____
(Signature and official position of person certifying as to availability of replacement.)

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PART III. RECOMMENDATION BY FLIGHT INSTRUCTION CONTRACTOR

(To be executed by Flight Instruction Contractor)

I agree to release the above-named employee under the provision checked below.

---------- 1. Competent replacement is immediately available as indicated in Part II.

---------- 2. Will release only if suitable replacement is provided by Regional CAA–WTS.

X 3. No replacement needed.

Date 12–2–43. PULLMAN MOSCOW AIR SERVICE
(Flight Contractor).
By R. O. PONATH

PART IV. RECOMMENDATION BY CAA–WTS REGIONAL OFFICE

(To be executed by Regional CAA–WTS Superintendents)

A. I recommend for release Simonson, Sylvia E. Johnson, under the provision checked below:

X 1. Approval, no replacement required.

---------- 2. Approval, replacement available.

B. I recommend ~~dis~~approval for the following reasons:

HERBERT S. BUCKMAN, LSB,
(CAA–WTS Superintendent's Signature).

Date 12–20–43.

PART V. RECOMMENDATION BY CAA–WTS WASHINGTON OFFICE

(To be executed by the WTS Washington Office)

The above-named employee (cross out one) is ~~is~~ ~~not~~ released.
This information has been referred to ----------
Date December 29, 1943.

JOHN P. MORRIS,
Director, CAA WAR Training, LSB.

Instructions and Routing:

1. Part I of original and four copies is executed by employee requesting release.
2. Part II of original and three copies is executed by Flight Instruction Contractor or Representative of CAA–WTS.
3. Original and three copies (total of four) to Flight Instruction Contractor who executes Part III and forwards original and two copies immediately to CAA–WTS Regional Superintendent. At the same time, the Flight Instruction Contractor sends fourth copy to District Superintendent, CAA War Training Service. The fifth copy is forwarded direct to CAA–WTS Regional Superintendent by employee.
4. Part IV of original and two copies is executed by CAA–WTS Superintendent and forwarded to Washington Office, Reference A–156. The fourth copy received from employee direct is filed for reference in Regional Office.
5. Washington Office approves or disapproves the release and keeps one, returning one copy to the Regional Office and forwarding one copy to the appropriate Armed Force, Agency, or Organization which employee has specified in Part I of this form. Regional Office advises Applicant and District Office of action taken.

IN RE H. R. 4778, BILL FOR THE RELIEF OF MRS. SYLVIA SIMONSON

STATE OF WASHINGTON,
County of Spokane, ss:

Sylvia Simonson, being first duly sworn on oath, deposes and says:

Attention is respectfully directed to the letter of October 3, 1949, from Hon. Gordon Gray, Secretary of the Army, in which a recommendation is made that the above bill be not favorably considered, and in reply to the contentions made in said letter affiant states as follows: In said letter reference is made to a statement of Stanley A. Olinger, which statement does not include the fact that at the time the parachute jump was made from the plane, which was owned by the

War Training Services of the Civil Aeronautics Authority, the plane was on fire due to engine trouble, which developed after the plane was in the air. Flying with affiant was Aviation Student Hubert O. Knauff, Serial No. 38510331, who was a member of the Armed Forces of the United States and whose life was saved by the prompt action of flying instructor Simonson in pushing said aviation student onto the wing of the plane from which he thereafter made a safe jump, but due to the turbulent winds plus the fact that Flying Instructor Simonson weighed only 115 pounds and is of slight build, when her parachute landed it failed to collapse and she was dragged along the frozen ground for approximately a half mile, causing the injuries mentioned in her claim.

In a letter dated March 9, 1944, from Col. W. J. Kennard, of the United States Army Medical Corps, he reviews the entire matter and states in part as follows:

"It is felt, due to the outstanding services performed in the past by this patient and her husband over a period of many months in the instruction of military personnel, that the Government does have a moral obligation to assist in rendering medical service."

In the letter above referred to reference is made to a communication of August 2, 1949, from the Commanding General, Sixth Army, San Francisco, Calif., in which it is stated in part:

"There is no evidence of any negligence on the part of the United States and it appears that the injuries were a direct result of Mrs. Simonson's lack of skill in making a parachute landing."

Said statement is not a correct statement of fact for the reasons hereinbefore set forth and as appear in the other affidavits already on file in connection with the above claim. The plane, which was owned by the United States Army, was not a safe plane to fly, as is shown by the fact that it did develop engine trouble. Negligence on the part of the United States Army is therefore shown in failing to provide safe instrumentalities with which to work. It is also considered improper to impute lack of skill in making a parachute landing when affiant was engaged in attempting to save her own life and that of a member of the Armed Forces of the United States, who had only had slight flying experience prior to that time and by the further fact that affiant was confronted with an emergency, and cannot be held with as high a degree of care as she might have exercised had she had ample opportunity to consider the matter and decide upon the best course of action in advance.

The letter above referred to also makes the assertion that an employee of a private concern engaged in work under a Government contract has no legal or moral claim against the United States unless it is shown that his or her injury was caused by the negligent or wrongful act or mission of an employee of the United States while acting within the scope of his employment. Affiant contends that her case is directly within the exception contained in the above statement for the reason that the airplane in question was owned by the United States; that its agent, the Pullman-Moscow Air Service, was charged with maintaining the airplane in proper mechanical condition, and omitted to do so, as a result of which the accident occurred. The workingmen's compensation laws of the State of Washington do not apply to this type of work. The Pullman-Moscow Air Service, who employed affiant as an aviation instructor, did not have contract liability insurance; the Civil Aeronautics Authority of the Department of Commerce had no insurance coverage and it therefore would appear that even though affiant was engaged in the important work of training United States Army fliers at the time of her injuries, that the Army disclaims all responsibility.

There is attached hereto a clipping from the Daily Idahonian dated November 30, 1943, published less than a month before the accident in question, which should have considerable weight with the committee when considering this claim.

There is also attached hereto a letter dated December 24, 1943, from Jacqueline Cochran, Director of Women Pilots of the Army Air Forces, respecting the application of affiant for instruction work in Wasp training; likewise the release dated December 29, 1943, which is 2 days after the injuries to affiant, and also letter dated January 26, 1944, from Jacqueline Cochran, upon receiving information concerning the accident.

SYLVIA SIMONSON.

Subscribed and sworn to before me this 1st day of June 1950.

[SEAL] DEL CARY SMITH, JR.,
Notary Public in and for the State of Washington, residing at Spokane.

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SPOKANE WASH.

Referable: Mrs. Sylvia Simonson.

Mr. DEL CARY SMITH, Jr.,
Spokane, Wash.

DEAR SIR: As per our telephone conversation, herewith a report on the above.

Mrs. Simonson was examined on the 2d of November 1949 for a civil aeronautics rating, and was subsequently issued a class 2 medical certificate based upon the physical findings at that time.

In summary, it might be stated that Mrs. Simonson's general physical condition is excellent following the severe accident she had in 1943. Considering her 32 months' hospitalization and the repeated operations for reconstructive surgery, her mental attitude is good, but there is a certain amount of psychic trauma and she still has mental reservations about her appearance, due to the scarring from the skin graft, which is noticeable on the right forehead. Likewise the marked scarring of the right forearm and thigh where skin was obtained for the grafting is noticeable and she is naturally conscious of this condition when in either a sleeveless dress or bathing suit. In spite of this marked disfigurement, I feel she has done remarkably well but it is hard to determine just what those psychic factors and scars will do to her make-up in the coming years.

Very truly yours,

MARION M. KALEZ, M. D.

Subscribed and sworn to before me this 1st day of December 1949.

[SEAL] DEL CARY SMITH, Jr.,
Notary Public in and for the State of Washington, residing at Spokane.

STATE OF WASHINGTON,
County of Spokane, ss.:

Robert F. Nelson, being first duly sworn on oath, deposes and says:

I now reside at Opportunity, Wash., route 2, and I am employed at the Spokane Valley Herald of Opportunity, a weekly newspaper; that I was a flying instructor employed by the Wallace Air Service, of Spokane, Wash., at the Pullman-Moscow Regional Airport at Washington State College, Pullman, Wash., for the United States Army Air Corps, from September 1943 until October 1945; that during the time of my employment with the flight training group at Pullman, Wash., I was well acquainted with Sylvia Simonson and with her husband, Frank Simonson; that I was at the airfield on the day the accident occurred, December 27, 1943, but was not an eyewitness to said accident; that I do recall the wind was blowing strongly and I also heard about the accident shortly after it occurred.

ROBERT F. NELSON.

Subscribed and sworn to before me this 30th day of November 1949.

[SEAL] DEL CARY SMITH, Jr.,
Notary Public in and for the State of Washington, residing at Spokane.

IN RE H. R. 5778, A BILL FOR THE RELIEF OF MRS. SYLVIA SIMONSON

STATE OF WASHINGTON,
County of Spokane, ss:

Stanley Olinger, being first duly sworn on oath, deposes and says:

That I reside at 1608 East Third Avenue, Spokane, Wash.; that I was a flight instructor employed by Wallace Air Service of Spokane, Wash., at the Pullman-Moscow Regional Airport, training the 319th College Training Detachment stationed at Washington State College, Pullman, Wash., for the United States Army Air Corps (War Training Service) from June 1943 through July 1944; that at approximately 8:30 a. m. on December 27, 1943, as I was returning to the airport at the close of a flight period, I was flying at 2,000 feet and noticed a parachute blossom almost in front of me, and after looking around, I noticed a second chute which had opened; I circled above them and noticed one of the parachuters rise to his feet so I checked the second chutist to see if he landed safely; when the chutist failed to arise or show any attempt to arise, I picked a field on the downwind side of the chutist and prepared to land; however, when approaching the ground the wind direction changed and I found myself unable to land; as a result I made the second approach from a different direction and this time landed safely; during this procedure the person in the chute was dragged by

the wind until I was on their upwind side. Because of the unusually strong wind I found it extremely difficult to overtake the parachute which was still open and dragging its occupant over the plowed and frozen terrain.

After an approximate half-mile chase, I caught the parachute as it was temporarily stopped by a stock fence. While unfastening the chute, I recognized the chutist to be Mrs. Sylvia Simonson, who occupied the same practice area as I did in an instructor's capacity. At this time, a student from a second ship that had landed came to give assistance. We carried Mrs. Simonson through the fence and onto the highway where we stopped a car, loaded Mrs. Simonson on the floor of the back seat. The student who had assisted and the driver of the automobile took Mrs. Simonson to the hospital at the State College. I had returned to my airplane. I noticed at that time that Mrs. Simonson was completely scalped. The scalp was broken just above the eyebrows and the entire scalp, skin, and hair was laying on her shoulders. I also noticed that she was being dragged head first, lying on her back and her neck was bent so that her head was between her shoulders. On return to the field, I checked the wind velocity and found it to be between 26 and 27 miles per hour with strong gusts. I notified the chief pilot, Mr. Sid Ponath, of the accident on my return to the field.

STANLEY O. OLINGER.

Subscribed and sworn to before me this 3d day of December 1949.

[SEAL] DEL CARY SMITH, Jr.

Notary Public in and for the State of Washington, Residing at Spokane.

IN RE H. R. 4778, BILL FOR THE RELIEF OF MRS. SYLVIA SIMONSON

STATE OF WASHINGTON,
County of Spokane, ss.

I, Sylvia Simonson, also known as Sylvia Johnson Simonson, being first duly sworn on oath, depose and say: That I reside at South 809 Freya Street in Spokane, Wash. That I was employed as a flight instructor by the Wallace Air Service, Spokane, Wash., from March 3, 1943, until December 31, 1943, teaching flying to the aviation students of the 319th College Training Detachment at Pullman, Wash., holding commercial license No. 86795–41, with flight instructor's rating, and ground instructor's license No. 272465. I had taught 8 flight classes in the Army indoctrination course, giving 659 hours of dual flight instruction.

In September 1943 I enlisted in the Women's Air Force Service Pilots (WASP), and was assigned to the February 1944 class. On December 2, 1943, I applied for release as a flight instructor in war training service to go into WASP training in February 1944. This release was pending at the time of my accident. I was aloft with Aviation Student Hubert O. Knauff (Army serial No. 38510331), who was having his first flight period, when I noticed smoke coming from the engine. I turned off the engine switches and ordered my student to bail out. As he was climbing out of the airplane, flames were coming from the engine. I placed Aviation Student H. O. Knauff's right hand on the ripcord, shouted "pull this," and pushed him from the plane. Then I jumped. While being dragged by my parachute in the 30-mile-per-hour ground wind I unbuckled the leg fastener from the left leg, the chest buckle, and was working on the right leg buckle when I was knocked unconscious. I remember nothing for the following 19 days.

In Dr. F. A. Bryant's letter of February 13, 1944, he states:

"Mrs. Simonson had all the scalp taken from the top of her head. This has involved the upper part of the frontal lobe extending down about an inch above the eye of the left side and about an inch above each ear on both sides and down to below the junction of the occipital and parietal bone. There is absolutely no periosteum left on this bone. There is some pushed down on both sides, but a great deal of it was completely battered off. There is some of the scalp left. She has had a very severe infection and a number of fractures are in the skull."

On March 7, 1944, I was moved by private car converted into an ambulance, with Registered Nurse V. Coplinger in attendance, to Providence Hospital, Seattle, Wash., at my own expense, where I was under the care of Dr. Schreiner. Dr. Schreiner performed two operations on my head, readying the bare skull bones for skin grafting and stretching the remaining scalp. On April 5, 1944, Ivan D. Massey, commanding officer, 319th College Training Detachment, Pullman, Wash., notified my husband that the orders had been received admitting me to Bushnell General Hospital, and that my husband would be furnished "true copies," to be presented upon my admission to Bushnell General Hospital. He

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requested that Bushnell General Hospital be advised of the date I could be transferred. When my condition permitted, I was moved by private car converted into an ambulance, at my personal expense, to Bushnell General Hospital, Brigham City, Utah, arriving April 28, 1944. Capt. R. C. Tanzer, chief of plastic surgery, removed 44 square inches of skin from my left thigh to cover the skull. On June 18, 1944, I was granted a 60-day rest period.

In August 1944 when I applied for readmittance to Bushnell General Hospital, I was advised that the plastic surgery section had been moved to Dibble General Hospital, Menlo Park, Calif., and to write requesting admittance there. I was admitted to Dibble General Hospital on September 19, 1944, and was under the care of Capt. W. B. Macomber, chief of plastic surgery, undergoing five operations, before being sent home February 28, 1945, for 6 months or a year, because of the many emergency cases arriving from Europe. I was readmitted to Dibble General Hospital on February 22, 1946. The pedicle on my right arm had aged satisfactorily and my right arm was attached to my forehead for 2 months to make what is now my forehead. Hair-bearing skin was transferred from the lower back of my head to make a hairline in front. Dibble General Hospital was closed May 30, 1946, and the plastic surgery section was transferred to McCornack General Hospital, Pasadena, Calif., still under Lt. Col. W. B. Macomber. Because I was a civilian patient, I was not allowed to ride the Army hospital train to Pasadena, but had to pay my own passage and the expenses of the nurse, Lt. Virginia Dunham, ANC, that Lieutenant Colonel Macomber had ordered to accompany me. Five more operations ensued, and I was released August 28, 1946. A total of 120 square inches of skin was stripped from my legs and thighs during these operations.

In order to satisfy the above expenses, our lifetime savings were used; the money realized from the sale of our plane, Piper Cub J4A, NC23393; from the sale of our camera equipment, Contax II, Weston exposure meter, Solar enlarger; from guns, from Singer electric sewing machine; $410 borrowed from Miss Elvira Simonson, canceled check enclosed; and the insurance amounting to $500 paid directly to Bryant & Weisman clinic March 13, 1944.

Due to the fact that we were unable to procure receipts for all of the expenditures, such as time lost from work, depreciation on our car, gas and oil, medicines and bandages, telephone, hiring a maid to help at home, I only exhibit a minor part of the receipts that we were able to secure.

That I will be obliged to incur other and further expense, the exact amount of which I am unable to state at this time, for further surgery in connection with the removal of scars, to restore natural color to the grafted areas, and in reducing the size of the bald spots on my head.

I further state that I secured by commercial pilot's license without aid from the Government, which aid was extended to many commercial pilots during the war. That attached hereto is a partial list of the expenses incurred and paid by myself and my husband, Frank Simonson, in connection with my accident.

SYLVIA JOHNSON SIMONSON.

Subscribed and sworn to before me this 3d day of December 1949.

[SEAL] DEL CARY SMITH, Jr.,

Notary Public in and for the State of Washington, Residing at Spokane.

Date	Paid to—	Amount
Mar. 6, 1944	Bryant & Weisman clinic	$167.85
Mar. 13, 1944	Bryant & Weisman clinic, insurance check	500.00
Sept. 28, 1944	Bryant & Weisman clinic	150.00
Oct. 8, 1944	do	35.00
Apr. 14, 1944	Providence Hospital, Seattle	479.70
Do	Dr. Schreiner	350.00
Mar. 7, 1944	Ambulance, Colfax to Seattle	45.50
Apr. 18, 1944	Ambulance, Seattle to Brigham City, Utah	119.00
	Food	9.00
June 18, 1944	Ambulance, Brigham City to Pullman, Wash	73.50
	Food	4.50
Jan. 17, 1944	Mrs. Rudd (nurse)	70.00
Jan. 24, 1944	do	70.00
Feb. 6, 1944	do	8.00
Jan. 11, 1944	Mrs. Rupprecht	56.00
Feb. 9, 1944	Mrs. Snoddy	56.00
Jan. 5, 1944	Mrs. Caplinger	58.00
Jan. 13, 1944	do	70.00
Jan. 19, 1944	do	70.00
Jan. 27, 1944	do	60.00
Feb. 3, 1944	do	58.00

Date	Paid to—	Amount
Feb. 9, 1944	Mrs. Caplinger	$45.00
Feb. 17, 1944	do	56.00
Apr. 13, 1944	do	55.70
Mar. 2, 1944	do	56.00
Feb. 24, 1944	do	56.00
June 6, 1944	Bushnell General Hospital, Brigham City, Utah	88.01
June 16, 1944	Bushnell General Hospital	28.48
Sept. 15, 1944	Train to Dibble General Hospital	42.43
Oct. 5, 1944	Hospital fund, Dibble	10.00
Sept. 15, 1944	Food on trip to Dibble General Hospital	7.50
Oct. 14, 1944	Cash (blood donor)	10.00
Nov. 8, 1944	Hospital fund, Dibble	31.00
Dec. 15, 1944	Subsistence account, Dibble	44.00
Do	Southern Pacific RR	66.93
	Food	7.50
Dec. 12, 1944	Lt. Mae Gregarich (nurse)	25.00
Jan. 2, 1945	Railroad berth	4.72
	Food	7.50
Jan. 18, 1945	Wallace Air Service, round trip from La Grande, Oreg., to Pullman	24.50
Feb. 6, 1945	Hospital fund, Dibble	28.00
Feb. 28, 1945	do	27.00
Do	Southern Pacific to Pendleton	44.22
	Food	7.50
	Pendleton to Pullman	10.00
Feb. 19, 1944	Elk Drugs, Colfax	4.20
May 10, 1944	do	1.03
July 10, 1945	Higgins Drugs	11.80
Nov. 13, 1945	Elk Drugs	14.73
Feb. 21, 1946	Transportation to Dibble	39.70
	Breakfast	1.25
	Taxi	2.25
Mar. 12, 1946	Hospital fund, Dibble	7.00
Apr. 3, 1946	do	61.00
May 28, 1946	do	28.00
May 29, 1946	Southern Pacific to Pasadena, Calif	25.79
	Food	2.50
July 8, 1946	Custodian fund, McCornack General Hospital	31.00
Aug. 2, 1946	Hospital fund, McCornack General Hospital	31.00
Aug. 26, 1946	Custodian fund, McCornack General Hospital	26.00
Aug. 19, 1946	Kelso Travel Bureau	60.32
	Food	1.50
June 6, 1946	Mark Adams	150.78
Aug. 5, 1946	do	100.00
Dec. 15, 1946	Mrs. Mark Adams	50.00
May 21, 1947	Dorothy Knutson (maid)	25.00
Jan. 28, 1947	Dr. J. G. Wilson, Moscow	10.00
Oct. 17, 1947	Bryant & Weisman clinic	8.00
Oct. 11, 1947	Dr. J. G. Wilson	6.00
Oct. 22, 1947	do	6.00
Sept. 10, 1946	do	10.00
Nov. 9, 1946	do	5.50
Dec. 24, 1946	do	17.00
Feb. 9, 1948		10.75
Mar. 22, 1948	Dr. J. G. Wilson	8.00
Jan. 28, 1947	Owl Drug Co., Moscow	6.00
Oct. 11, 1947	do	4.50
Apr. 14, 1949	Decker's Pharmacy	1.75
Apr. 13, 1949	Moss Pharmacy	2.43
Apr. 13, 1949	Dr. D. Wilson McKinley	7.50
June 12, 1944	Telephone	4.80
	Tax	1.20
	do	.17
Sept. 4, 1944	Telephone	2.60
	Tax	.65
Sept. 14, 1944	Telephone	4.15
Dec. 3, 1944	do	4.45
Dec. 7, 1944	do	1.80
Dec. 12, 1944	do	2.60
	Total	4,093.74

IN RE H. R. 4778, BILL FOR THE RELIEF OF MRS. SYLVIA SIMONSON

STATE OF WASHINGTON,
County of Spokane, ss:

I, Frank G. Simonson, being first duly sworn on oath, depose and say: That I am the husband of Sylvia Simonson, also known as Sylvia Johnson Simonson, above named and reside with her at 809 South Freya Street, Spokane, Wash. That I was likewise employed as a flight instructor and was assistant to the chief pilot of the Wallace Air Service from November 1, 1942, until October 1, 1946,

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and was engaged in the teaching of flying to the aviation students of the 319th College Training Detachment at Pullman, Wash., at the time of the injury to my wife, Sylvia Johnson Simonson, as described in her affidavit dated December 3, 1949. That I did not actually witness the accident, but was advised of its occurrence soon after, and immediately went to the college hospital where my wife was a patient. I have read my wife's affidavit in connection with the various hospital treatments and medical treatments which she received thereafter; that most of the facts are within my personal knowledge and I can verify that we have expended from our own private funds in excess of $5,000 as a result of said accident. That at the time of the accident I owned my own private plane and had various other personal property of substantial value, all of which I was required to sell and dispose of in order to realize funds with which to pay for my wife's care. That we do not have receipts for all of the sums expended, but do have receipts for the amounts set forth in the affidavit of my wife, Sylvia Johnson Simonson.

FRANK G. SIMONSON.

Subscribed and sworn to before me this 5th day of December 1949.

[SEAL] DEL CARY SMITH, Jr.,
Notary Public in and for the State of Washington, Residing at Spokane.

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Calendar No. 1831

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1807

JAMES RICHARD HOGAN

APRIL 23 (legislative day, APRIL 9), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2240]

The Committee on the Judiciary, to which was referred the bill (S. 2240) for the relief of James Richard Hogan, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

AMENDMENT

On page 1, beginning on line 9, strike the words "operated by an employee of the United States Army".

PURPOSE OF AMENDMENT

The purpose of the proposed amendment is to strike from the bill a statement that the vehicle was operated by an employee of the United States Army. The status of the driver of the Government vehicle is an issue properly to be determined by the court.

PURPOSE

The purpose of the proposed legislation, as amended, is to confer jurisdiction upon the United States District Court for the District of New Mexico, to hear, determine, and render judgment on the claim of James Richard Hogan, of Albuquerque, N. Mex., for damages arising as the result of said James Richard Hogan being struck by a Government vehicle on the premises of the National Guard Armory, Socorro, N. Mex., on May 5, 1950.

Proceedings in such action are to be in accordance with the law applicable to tort claims against the United States and suit must be instituted within 1 year following date of enactment of this legislation.

STATEMENT

On the morning of May 5, 1950, Sgt. George O. Miller, a caretaker appointed by the adjutant general of the State of New Mexico, was engaged in the care of a vehicle owned by the United States Government, but loaned to the New Mexico National Guard for its use. Sergeant Miller was at the back of the truck giving directions and was aware of the presence of a child, James Richard Hogan, claimant herein, who was playing with his tricycle nearby. As the truck was backing to the garage, Sergeant Miller had the truck stop and pull forward a short distance so as to avoid contact with the side of the garage. As the truck pulled forward it ran into the tricycle of James Richard Hogan and pinned him underneath. As the result of the accident James Richard Hogan, who was then 3 years of age, sustained severe injuries in that his pelvis and urethra were injured. As of August 8, 1955, hospitalization was being continued in his case and it appears from an affidavit by Dr. H. J. Beck, of Albuquerque, N. Mex., a specialist in the field of urology, who has reviewed claimant's case history, that James Richard Hogan is totally and permanently disabled and there is little, if any, hope that the condition will improve during the remainder of his life.

After the accident the child's father retained counsel to take such legal action as was necessary, but the counsel employed failed to institute action under the Tort Claims Act since he apparently felt that an employee of the National Guard in peacetime was not an employee of the United States within the meaning of the Tort Claims Act. Counsel later reversed his position following the decisions in several cases involving similar circumstances, but, by this time, the statute of limitations had run on the claim.

The Department of the Army in reporting on this legislation objects to its enactment. The objection is based upon the assertion that the caretaker in this case was an employee of the State and not of the Federal Government.

The committee disagrees with the recommendation of the Department of the Army. Insofar as the status of Sergeant Miller is concerned, that is an issue to be tried and determined by the district court. Claimant's present counsel cites cases at variance with the opinion expressed by the Department of the Army. *U. S.* v. *Holly* (192 Fed. 2d 221 (1951); *U. S.* v. *Duncan* (197 Fed. 2d 293 (1952)). See also *Elmo* v. *U. S.* (197 Fed. 2d 230 (1952)).

However, there is a further issue to be disposed of not mentioned by the Department, namely, the waiver of the statute of limitations. Although the matter was not clear at the time the accident occurred, it now appears that by virtue of judicial decisions, claimant might have had a right of action in the Federal courts under the Tort Claims Act. Failure to institute action prior to the expiration of the statute of limitations ordinarily would be a sufficient bar to the consideration of this claim. However, in this instance, the committee believes that exception may properly be made. It appears that this claimant has been injured severely and that the injury will endure for the rest of claimant's life, that the counsel employed by his father permitted the statute of limitations to run without filing suit, and that the error in judgment on the part of the counsel would put a great hardship upon the claimant if permitted to stand. Since the claim involves the rights of a minor, the committee believes that a waiver of the

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statute of limitations is proper and the committee, therefore, recommends favorable consideration of this legislation which would provide that the claim be determined on its merits.

Attached to this report is the report of the Department of the Army referred to earlier, copy of letter dated June 16, 1954, signed by the present counsel for the claimant addressed to the sponsor of the legislation, the affidavits of James Russell Hogan, father of the claimant, George Miller, and Dr. H. J. Beck.

DEPARTMENT OF THE ARMY,
Washington, D. C., February 23, 1956.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to S. 2240, 84th Congress, a bill for the relief of James Richard Hogan.

This bill provides as follows:

"That, notwithstanding any statute of limitation or lapse of time or any provision of law to the contrary, suit may be instituted against the United States in the United States District Court for the District of New Mexico within one year after the date of enactment of this Act for damages resulting from James Richard Hogan, of Albuquerque, New Mexico, being struck by a Government vehicle operated by an employee of the United States Army on the premises of the National Guard Armory, Socorro, New Mexico, on May 5, 1950. In any such suit brought pursuant to this Act proceedings shall be had in accordance with the provisions of law applicable in the case of tort claims against the United States, but nothing in this Act shall be construed as an inference of liability on the part of the United States."

The Department of the Army is opposed to the above-mentioned bill.

On the morning of May 5, 1950, a New Mexico National Guard employee, Sgt. George O. Miller, asked a civilian, Lucas Montaya, to back a 2½-ton Army truck (which had been issued to the New Mexico National Guard) into the National Guard armory garage located at 117 East Manzaners Street, Socorro, N. Mex. Sergeant Miller was at the back of the truck giving directions and was aware of the presence of a child, James Richard Hogan, who was playing with his tricycle nearby. As the truck backed in, Sergeant Miller had the truck stop and pull forward a short distance so as to avoid contact with the side of the garage. As the truck pulled forward it ran into the tricycle of James Richard Hogan and pinned him underneath.

The civilian driver of the truck involved states that an operator's report of motor-vehicle accident was prepared at the time of the accident and forwarded to the adjutant general, State of New Mexico. However, efforts to locate this report have not been successful. At the time of the accident, no investigating officer was appointed nor were the police notified.

It appears that James Richard Hogan was 3 years of age at the time of the accident; that he sustained severe injuries in that his pelvis and urethra were injured; and that as of August 8, 1955, hospitalization was being continued in his case. It further appears that at the time of the accident, James Richard Hogan was living with his parents in the armory caretaker's quarters and that his father was an employee of the State of New Mexico in the capacity of administrator assistant for Battery C, 120th AAA Battalion (National Guard), Socorro, N. Mex.

On August 8, 1955, Sergeant Miller executed a certificate in which he stated "This is to certify that I, George O. Miller, was called to active duty in the service of the State of New Mexico as a general unit material mechanic on December 1, 1948."

The records of the New Mexico National Guard show the following orders relative to Sgt. George O. Miller:

SPECIAL ORDERS
No. 69 } "OFFICE OF THE ADJUTANT GENERAL,
SANTA FE, 29 November 1948.

* * * * * * *

2. Under the provisions of par 1 NGR 75–16, dtd 29 Dec 47 and Ltr CSNGB dtd 1 Jul 48, Subj: Authorization for Accounting and Maintenance Personnel for

Fiscal Year 1949, the fol-named EM, orgn indicated, are aptd Mechanic, Gen, Unit Materiel, WD NGB Gr NGM 11, $2220.00 p/a eff 1 Dec 48:

SGT. GEORGE O. MILLER 38352665 Btry C, 717 AAA Gun Bn vice Hogan reld

* * * * * * *

BY COMMAND OF THE GOVERNOR:

CHARLES G. SAGE,
Brigadier General,
The Adjutant General.

OFFICIAL:
JOHN P. McFARLAND,
Colonel, CAC, NMNG,
Assistant Adjutant General."

SPECIAL ORDERS
No. 69

"STATE OF NEW MEXICO,
"OFFICE OF THE ADJUTANT GENERAL,
SANTA FE, 29 November 1948.

EXTRACT

* * * * * * *

11. The fol named EM are called to AD in the Service of the State and will report to their respective CO's for duty.

* * * * * * *

Sgt George O. Miller, 38352665 Btry "C", 717th AAA Gun Bn

* * * * * * *

BY COMMAND OF THE GOVERNOR:

CHARLES G. SAGE,
Brigadier General,
The Adjutant General."

OFFICIAL:
JOHN P. McFARLAND,
Colonel, CAC, NMNG,
Assistant Adjutant General."

Section 90 of the National Defense Act, as amended (32 U. S. C. 42) provides:

"Funds allotted by the Secretary of the Army for the support of the National Guard shall be available * * * for the compensation of competent help for the care of material, animals, armament, and equipment of organizations of all kinds, under such regulations as the Secretary of the Army may prescribe. * * * Funds hereafter appropriated under the provisions of this title for the support of the National Guard of the several States, Territories, and the District of Columbia, shall be supplemental to moneys appropriated by the several States, Territories, and the District of Columbia, for the support of the National Guard, and shall be available for the hire of caretakers and clerks: *Provided,* That the Secretary of the Army shall, by regulations, fix the salaries of all caretakers and clerks authorized to be employed, and shall also designate by whom they shall be employed."

National Guard Regulations No. 75–16, Changes No. 1, Department of the Army, April 16, 1948, entitled "Accounting Clerks and Caretakers" states:

"1. Authority.—Accounting clerks and caretakers referred to in these regulations are employees authorized under the provisions of section 90, National Defense Act, for the administration and care of material, armament, vehicles, and equipment provided for the National Guard and used solely for military purposes. The Secretary of the Army has delegated to the several adjutants general of the States, Territories, and the District of Columbia, authority to employ, fix rates of pay, establish duties and work hours, and to discharge employees within the purview of this regulation; subject to the provisions of law and such instructions as may from time to time be issued by the Chief, National Guard Bureau."

It appears that Sgt. George O. Miller was employed as a caretaker by the adjutant general of the State of New Mexico and, therefore, he is considered a National Guard employee or employee of the State of New Mexico and not an employee of the Federal Government.

The primary relationship of the caretaker is to the State, rather than to the United States. His duty to protect the property assigned to his unit is primarily concerned with protecting the State from liability for loss or destruction of this property. The State is responsible for the equipment and other materiel loaned

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to it and must account for all property received from the United States, otherwise it must pay for the loss. In protecting the State, and as a practical matter, the caretaker is told what to do, where to go, and how to do it by the State authorities, and not by representatives of the Federal Government. The control thus vested in the State is that which traditionally and legally establishes the relationship of employer-employee.

The facts in this case show that this accident did not take place while the National Guard was in the service of the United States; that the driver of the truck involved was a civilian acting without compensation; and that a member of the New Mexico National Guard, not on active Federal duty, was involved in the accident. In situations involving the payment of damages to persons who have sustained losses as the result of the operation of equipment belonging to the United States which has been loaned to the several States for the use of the National Guard, the principle is well established that such damages are not proper charges against the funds of the United States, but are rather, the responsibility of the individual States. To contend that the Government vehicle in this case was "operated by an employee of the United States Army," as stated in the subject bill, is not supported by the facts of the case. The Department of the Army objects to enactment of the bill for the reason that the Federal Government was in no way legally connected with or responsible for the accident.

The fiscal effect of this bill cannot be determined at this time.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.

JUNE 16, 1954.

Hon. DENNIS CHAVEZ,
Senate Office Building,
Washington, D. C.

DEAR SENATOR CHAVEZ: I am writing this letter on behalf of James Richard Hogan, a minor, who was injured on or about the 5th day of May 1950, at Socorro, N. Mex., for the purpose of asking for special legislation for the benefit of said James Richard Hogan.

James Richard Hogan was born on the 21st day of March 1947, and is the son of James Russell Hogan and Virginia Hogan. All of the parties now reside at Albuquerque, N. Mex. For convenience and simplicity, the father, James Russell Hogan, will hereinafter be referred to as Russell, and the injured child, James Richard Hogan, will hereinafter be referred to as Richard.

On or about the 5th day of May 1950, Russell was employed as unit administrator of Battery C, 120th AAA Gun Battalion of the 111th Brigade of the National Guard of the United States and had so been employed since the 15th day of October 1947, as either unit administrator or caretaker. Since the commencement of such employment, Mr. Hogan had been required to live on the premises of the National Guard armory at Socorro, N. Mex., and he did so live there with his family, namely, Virginia Hogan, his wife, and James Richard Hogan, his son, in an apartment furnished by the National Guard. Therefore, Richard, the minor son of Russell, played about the premises of the armory each day.

On the 5th day of May 1950, Richard was riding his tricycle about the premises as he had been for many months previous to that date. George Miller, the unit caretaker, was engaged in servicing a National Guard 2½-ton GMC truck, the United States Army serial number of which is unknown, but which should be obtainable from National Guard records. In the course of such work it became necessary to have the truck backed into a garage which furnished only a few inches of clearance on either side. In addition to the narrow backing space there was lumber stacked in the center of the garage with boards in lengths from the front to the rear thereof, so that the truck could be backed over the stack, leaving all of the space which would ordinarily be empty space beneath the truck filled with the stack of lumber. Therefore, the difficulty of the operation is very obvious.

George Miller knew of the presence of Richard about the premises. In fact, Mr. Miller knew that Richard was in the immediate vicinity, but became so involved in the operation of backing the truck that he failed to keep a lookout for Richard, and after having backed the truck into the garage the truck was

moved forward a few feet very suddenly and as a result of the sudden movement and the failure to keep a lookout for Richard, the truck was driven over the tricycle and the body of Richard, injuring Richard quite severely.

Richard was hospitalized for a long period after the accident and has undergone several surgical operations since the accident. As a result of the accident Richard must now have correct medical care and treatment, so that it is necessary for the family to live in Albuquerque. Russell was forced to resign his position in Socorro and take a lesser position in Albuquerque in order to be near the required medical care and treatment.

The family has spent large sums of money. In fact, the medical expense since the 5th day of May 1950, to the 1st day of January 1954, amounted to a sum in excess of $10,000. It is reasonable to assume that medical expenses will be incurred in like ratio in future years and for the remainder of the life of Richard.

The original injury was a rupture of the neck of the bladder and a fracture of the pelvis. Since there has been an attempt to repair a rupture of the urethra and another operation to repair the neck of the bladder and the urethra, a plastic procedure. Richard's physician, Dr. H. J. Beck, of Albuquerque, N. Mex., feels that he is doing fairly well at the present time under a course of urethral dilatations which are performed and have been performed for some time at periodic intervals.

It is the opinion of Dr. Beck that said dilatations will be necessary for the remainder of the life of Richard. From common experience it is known that these dilatations are necessary at periodic intervals as often as 1 week or at times he is able to go for as long as 1 month. The dilatation is so severely painful that it is necessary to have an anesthetic and then enter the body through the urethral tract to remove scar tissue which grows over and closes the tract. Before each dilatation the child is in pain for a day or so and then, of course, is incapacitated for several days afterward. From the medical report it seems apparent that Richard will never lead a normal life nor will he be able to work and earn his living.

Russell is employed by the State highway department for the State of New Mexico and earns a moderate wage. The mother of the child is unable to work because of the necessity of being available to care for the child at all times, so that this situation has caused a terrible financial handicap to the family and they are unable to keep current large medical expenses, even though Dr. Beck and other physicians involved have been very lenient and more than fair in making charges. If something should happen to Russell, it probably would be necessary for the child to become a ward of the State welfare department because of the impossibility of the mother to meet the many expenses. Also the family is of the class of earnings that it will be unable to provide for Richard's future or for care for him after the father and mother are no longer able to care for him.

Since the accident the National Guard officials in New Mexico have been very interested in obtaining some aid for Mr. Hogan. However, no assistance has been obtained. Several members of the State legislature introduced a bill in the House of Representatives of the State of New Mexico which was later held to have been unconstitutional. Mr. Hogan retained the legal services of Mr. John B. McManus of the firm of Simms & Modrall in Albuquerque, N. Mex., to take whatever legal action possible. Mr. McManus was of the opinion that this was not an action cognizable under the Federal Tort Claims Act, because of National Guard Bulletin, Circular No. 18, Department of the Army, November 15, 1949, and failed to file an action. Later Mr. McManus was of the opinion that due to recent cases the action was cognizable, but he had failed to file within the 1-year period.

Russell Hogan and Virginia Hogan retained me in this matter in the fall of 1953 and now my sole interest is to obtain some assistance for a just and fair settlement on behalf of James Richard Hogan.

On August 10, 1953, the United States Court of Appeals for the Third Circuit decided the case of *O'Toole, et al.* v. *United States, et al.* (206 F. 2d 912), which was an action by the passenger and driver of an automobile individually and by a passenger as administratrix of the estate of a passenger and owner of the automobile for injuries and for wrongful death suffered as a result of a collision between an automobile and a tractor operated by a member of the District of Columbia National Guard. The District Court for the District of Delaware dismissed the action on the basis of the rule laid down in the National Guard Bulletin, supra, which stated that the Federal Tort Claims Act did not apply. The court of appeals held that the caretaker operating the tractor was an employee of the United States and that the district court had jurisdiction under the Federal Tort Claims Act. The decision in this case was limited to the liability of the United

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States for torts of the District of Columbia National Guard. The court did not decide this on the basis of the District of Columbia being an agent of the United States.

Sections 2674 and 1346 (b) of title 28, United States Code, provide that the United States shall be liable for tort claims in the same manner and to the same extent as private individuals under like circumstances for loss of property or personal injuries caused by the negligence or wrongful act or omission of any employee of the United States Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

Under section 2671 of title 28, United States Code, an employee of the Government includes officers or employees of any Federal agency, members of the military or naval forces of the United States, and persons acting on behalf of a Federal agency in an official capacity, temporarily or permanantly in the service of the United States, whether with or without compensation. A Federal agency is further defined to include the executive departments and independent establishments of the United States.

George Miller was undoubtedly performing the work of the New Mexico National Guard at the time his negligence caused the injury to Richard Hogan. He was a full-time employee not only of the National Guard, but of the United States. As shown by affidavits which are a part hereof, George Miller was paid by the Fourth Army of the United States at Fort Sam Houston, Tex. It is believed that the State of New Mexico is in no different position than the District of Columbia in this situation and that the President of the United States has the same amount of control as is mentioned in the case over the New Mexico National Guard. The vehicle causing the injury to Richard Hogan was owned by the United States, was assigned to the State guard, and it had a United States Army number.

In the O'Toole case, supra, the court cited with approval a case involving a State guard, that is, *United States* v. *Holly* ((Tenth Circuit) 1951, 192 F. 2d 221), which held that a unit caretaker attached in peacetime to a State national guard is a Federal employee within the Federal Tort Claims Act, because of the Federal authority exercised over him pursuant to law. Your attention is also invited to *United States* v. *Duncan* ((Fifth Circuit) 1952, 197 F. 2d 233).

James Richard Hogan may have a recourse at law, that is, he may have a right to bring an action under the Federal Tort Claims Act in the United States District Court for the District of New Mexico. In order to prevail in such suit he must sustain the decisions of other circuits, comply with every technical rule of procedure of law, and overcome the possible defense of the statute of limitations. The latter obstacle to his recovery has been discussed with the United States district attorney for the State of New Mexico, who is of the opinion that the statute of limitations of 1 year applies in this case even though the injured person is a minor. Also he is of the opinion that he does not have the authority to waive the statute of limitations. Therefore, in order to invoke the one remedy the injured person has, the entire future will be a risk and it is conceivable that the child will take nothing.

From the facts mentioned herein and stated in further detail in affidavits which are made a part hereof, it appears that James Richard Hogan has suffered a great injury as the result of the negligence of a Federal employee; that he is totally and permanently disabled through no fault of his own; and that his rights have been jeopardized, if not entirely lost, by other persons and through no fault of his own. The child is undoubtedly entitled to just compenastion in the form of a pension of monthly payments or a lump sum which may be invested for his benefit and care for the remainder of his life.

In view of the above facts and circumstances and being in the position where no other way is seen to do justice for this child, any assistance you may care to give and feel that is just will be deeply appreciated both by me and all parties concerned.

Respectfully submitted.

C. DERWOOD KNIGHT.

AFFIDAVIT OF JAMES RUSSELL HOGAN

STATE OF NEW MEXICO,
County of Bernalillo, ss:

Comes now James Russell Hogan of Albuquerque, N. Mex., and being first duly sworn, upon his oath deposes and says:

That he is the father of James Richard Hogan and the husband of the child's mother, Virginia Hogan;

That on the 5th day of May 1950, he was employed as unit administrator for Battery C, 120th AAA Gun Battalion, a National Guard unit at Socorro, N. Mex.; that his Army serial number was 38013611; that he received monthly salary checks from the Department of the Army of the United States of America; that such employment was on a full-time basis and required his presence at all times at the armory at Socorro, N. Mex., so that he was compelled to live in an apartment which was a part of the armory building; that his family lived in said apartment with him;

That on or about the 5th day of May 1950, his son, James Richard Hogan, was injured while riding his tricycle as a result of being run over by a 2½-ton GMC truck, the United States Army number which is not known; that he was not an eyewitness to the accident, but was present within a few minutes thereafter and learned from talking with George Miller that the said George Miller knew James Richard Hogan to be on the premises and about the said truck, but failed to look out for him, and as a result thereof the said James Richard Hogan was seriously injured;

That as a result of said injury he was forced to leave his employment with the Department of Army in the city of Socorro and move himself and his family to the city of Aubuquerque, N. Mex., so as to be near adequate medical care for the said child; that his wife, Virginia Hogan, was forced to leave employment in the city of Socorro in order to devote her full time to the care of said child;

That he, from his own funds and from the funds of said James Richard Hogan, has paid in excess of the sum of $10,000 for medical care since the 5th day of May 1950, and up to the 31st day of December 1953; that he is informed by medical specialists that the child is totally and permanently disabled and will remain so for the rest and remainder of the child's natural life; that he is informed by medical specialists that the child will require close medical care and supervision for the rest and remainder of the child's natural life;

That his financial condition is such that he has no funds to keep the cost of medical care current, so that the welfare of the family, and more particularly of the child, is in great danger; that medical care has been provided through the kindness of H. J. Beck, M. D., at charges far below the normal rate charged by physicians;

That he is informed by specialists that surgical operations will be required for said child in future years; that said child must currently have medical treatment in the form of dilatations at intervals of from 1 week to 1 month;

That he has made and executed this instrument under his free act and deed without remuneration therefor; and that the said instrument is made and executed for the purposes of stating facts known to him and not to defraud the Government of the United States.

Further affiant saith not.

JAMES RUSSELL HOGAN.

Subscribed and sworn to before me this 17th day of May 1954.

[SEAL] MARY ALICE WHITE,
Notary Public.

My commission expires August 21, 1957.

AFFIDAVIT OF GEORGE MILLER

STATE OF NEW MEXICO,
County of Socorro, ss:

Comes now George Miller of Socorro, N. Mex., being first duly sworn, and upon his oath deposes and says:

That he is an employee of the Department of Army of the United States of America;

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That on or about the 5th day of May 1950, he was employed as unit mechanic of Battery C, 120th AAA Gun Battalion, of the National Guard; that his employment was on a full-time basis and that he received monthly salary checks from the Department of Army of the United States of America;

That he knows James Richard Hogan and the parents of James Richard Hogan, namely, James Russell Hogan and Virginia Hogan; that on or about the 5th day of May 1950, James Russell Hogan was employed as unit administrator for Battery C, 120th AAA Gun Battalion, at Socorro, N. Mex.; that such employment required James Russell Hogan to live on the premises of the armory at Socorro, N. Mex., and said James Russell Hogan did reside there with his wife the said Virginia Hogan, and his son, the said James Richard Hogan;

That on or about the 5th day of May 1950, he was servicing and moving equipment on the premises of the National Guard armory at Socorro, N. Mex.; that in the course of his duties it became necessary for a 2½-ton GMC truck, the United States Army number which is not known, to be driven into a garage; that the said garage offered a clearance overall of not more than 1 foot, and further that lumber was stacked on the floor in the center of the garage so that the entry of the truck into the garage was a delicate task; that the moving of the truck into the garage was his duty and such operation was under his direction and control; that at this time he knew of the presence of the child, James Richard Hogan, and in having the truck backed into the garage kept a lookout for said James Richard Hogan; that after the truck was backed into the garage, in moving the truck forward to the proper position that he failed to keep a lookout for said James Richard Hogan and as a result of such negligence the truck was run over the said James Richard Hogan, who was injured severely thereby; that he feels he could have prevented such accident by keeping a careful lookout, because he knew of the presence of James Richard Hogan; that he does not know the extent of the injuries, but he does know said injuries were serious and that the body of James Richard Hogan was mangled;

That he knows from his own knowledge that James Russell Hogan was forced to leave his employment at the National Guard armory and move to Albuquerque, N. Mex., so as to be near proper medical care for the said child;

That he knows from his own knowledge that the child's mother, Virginia Hogan, was forced to leave gainful employment in Socorro to devote her full time to the care of said child;

That he is still employed by the Department of Army of the United States of America; that he has received no remuneration for the execution of these presents, and the same has been done by his free act and deed, with full realization of all the facts and consequences thereof.

Further affiant saith not.

GEORGE MILLER.

Subscribed and sworn to before me this 17th day of May, 1954.

[SEAL] R. L. BALDWIN,
Notary Public.

My commission expires February 5, 1958.

AFFIDAVIT OF H. J. BECK

STATE OF NEW MEXICO,
County of Bernalillo, ss:

Comes now H. J. Beck, M. D., being first duly sworn, and upon his oath deposes and says:

That he is a medical doctor duly licensed to practice the profession of medicine within the State of New Mexico and that he does practice at suite 12A, Medical Arts Square, Albuquerque, N. Mex., and that he has so practiced at all times mentioned herein; that he is a specialist in the field of urology and limits his practice to said specialty;

That he is personally acquainted with James Russell Hogan, James Richard Hogan, and Virginia Hogan, and knows the relationship of said parties; that James Richard Hogan is presently under his medical care and has been for a long period of time prior to these presents;

That said James Richard Hogan was injured on or about the 5th day of May 1950, at which time he suffered a rupture of the neck of the bladder and a fracture of the pelvis; that he did not see said James Hogan at the time of the initial injury, but has since reviewed the case history at St. Joseph's Hospital in Albuquerque, N. Mex.;

That he has heretofore attempted to repair a rupture of the urethra; that since the first attempt he has performed an operation on the said James Richard Hogan to repair the neck of the bladder and the urethra, a plastic procedure; that at the present time the said James Richard Hogan is doing fairly well under a course of urethral dilatations; that said urethral dilatations are performed at periodic intervals and must be performed for the rest and remainder of the life of said James Richard Hogan;

That to his own knowledge the medical and hospital bills for the said James Richard Hogan for the period from the date of the injury to January 1, 1954, amounted to a sum in excess of $10,000; that the medical and hospital bills heretofore rendered have been below the normal amount charged for the services rendered; that in his opinion the said James Richard Hogan is totally and permanently disabled and there is little, if any, hope that the condition will improve for the rest and remainder of his life; that in his opinion it is a medical impossibility to estimate the life of said James Richard Hogan;

That the medical expenses heretofore incurred for the care of said James Richard Hogan will continue throughout the rest of the life of the said James Richard Hogan because of the necessity of the continuation of the periodic dilatation of the urethral; that it is a medical impossibility to foretell the number of operations which may be necessary in the future and the number of emergency situations which may arise.

That he has made and executed this instrument as his own free act and deed without compensation or the promise of compensation therefor.

Further affiant saith not.

H. J. BECK, M. D.

Subscribed and sworn to before me this 24th day of May 1954.

[SEAL] DELLA LONTEEN,
Notary Public.

My commission expires February 17, 1956.

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Calendar No. 1832

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1808

SALOMON BENVENISTE

APRIL 23 (legislative day, APRIL 9), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2271]

The Committee on the Judiciary, to which was referred the bill (S. 2271) for the relief of Salomon Benveniste, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

In line 7 following the word "fee.", strike the remainder of the bill.

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to grant the status of permanent residence in the United States to Salomon Benveniste. The bill provides for the payment of the required visa fee. The quota charge has been deleted, inasmuch as the beneficiary is entitled to nonquota status as the husband of a United States citizen.

STATEMENT OF FACTS

The beneficiary of the bill is a 36-year-old native of Greece who claims to be stateless. He voluntarily relinquished his Greek citizenship to resettle in Israel and after spending 3 months there, he obtained employment as a crewman on a Greek ship, and his only entry into the United States was on February 15, 1950. He is now married to a United States citizen and they are the parents of one United States citizen child.

A letter, with attached memorandum, dated December 1, 1955, to the then chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the bill reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., December 1, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2271) for the relief of Salomon Benveniste, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Los Angeles, Calif., Office, which has custody of those files.

The bill would grant the alien permanent residence in the United States upon payment of the required visa fee. It would also direct that one number be deducted from the appropriate immigration quota.

It appears that the beneficiary is eligible to nonquota status, and, if otherwise qualified, able to obtain a nonquota immigrant visa.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE SALOMON BENVENISTE, BENEFICIARY OF S. 2271

The beneficiary, Salomon Benveniste, also known as Solomon Haim Benveniste, is a native of Greece, who was born January 4, 1920. He has testified that his present citizenship is unknown. Mr. Benveniste and his wife reside at 2350 Walgrove Avenue, Los Angeles, Calif. His wife, Clarice Maissa, whom he married on March 24, 1954, is a native-born citizen of the United States, and is dependent for support upon his earnings. Their first child is expected in November 1955. Mr. Benveniste is employed as a cabinetmaker and earns $2.35 per hour. He attended public schools in Cavala, Greece, for 8 years, and prior to the commencement of World War II was employed as a carpenter in Greece. Mr. and Mrs. Benveniste own assets they value at approximately $1,550, which include furniture, an automobile, and a bank account.

Mr. Benveniste's only entry into the United States occurred on February 15, 1950, at which time he was admitted as an alien crewman for a temporary period not to exceed 29 days. On March 10, 1954, he was placed under deportation proceedings, and after being accorded a hearing, was found deportable on the ground that at the time of entry he was an immigrant who was not in possession of the required immigrant visa. He was also found deportable for the reason that while a resident in the United States he failed to furnish the notification of his current address, as required

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by the Immigration and Nationality Act. His application for permission to depart voluntarily in lieu of deportation was denied, and an appeal to the Board of Immigration Appeals for that privilege was dismissed on July 5, 1955.

The beneficiary testified that in 1942 he and his entire family were conscripted into a forced-labor battalion in Bulgaria, and while so employed the other members of his family died as a result of their mistreatment. After the cessation of hostilities, the beneficiary returned to Greece, where he served honorably for 6 months in the armed forces of Greece. He was medically discharged due to defective hearing incurred during his detention in Bulgaria. Mr. Benveniste testified that in November 1949 he voluntarily relinquished his Greek citizenship in order to resettle in the newly formed state of Israel. After approximately 3 months in Israel, Mr. Benveniste obtained employment as a crewman aboard a Greek merchant vessel, and was so employed at the time of his arrival in the United States.

A letter dated March 8, 1956, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with further reference to the bill reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., March 8, 1956.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: This refers to the private bill S. 2271 for the relief of Salomon Benveniste. This bill was postponed indefinitely by your committee on January 9, 1956, since the beneficiary appeared to be eligible for preexamination under 8 Code of Federal Regulations 235 (a).

The beneficiary was ordered deported under section 241 (a) (1) and (5) of the Immigration and Nationality Act in that at the time of entry he was an immigrant not in possession of the required immigrant visa, and that he had failed to comply with the provisions of section 265 of the act relating to notification of address. Denial of his application for voluntary departure was mandatory under section 244 (e). Since a grant of voluntary departure is necessary to effectuate preexamination, such relief is not available to the beneficiary in view of section 101 (g) and 212 (a) (17).

Accordingly, unless your committee notifies this Service of its intention to reconsider S. 2271 on the merits, the alien's departure must be effected under the outstanding order of deportation.

Sincerely,

——— ———, *Commissioner.*

Senator Irving M. Ives, the author of the bill, has submitted a number of letters and documents in connection with the case, among which are the following:

90006°—57 S. Rept., 84-2, vol. 6——82

CENTRAL SEPHARDIC JEWISH COMMUNITY OF AMERICA, INC.,
New York 1, N. Y., June 8, 1955.

To Whom It May Concern:

According to creditable testimony of several members of this organization, the undersigned chief rabbi of the Central Sephardic Jewish Community of America, Inc., certifies herewith that Mr. Solomon Benvenisti, 1007 Ocean View Avenue, Brooklyn, N. Y., care of Aron Hazan, is a person of good character, honesty and integrity; that he is married and the prospective father of a child, and that all members of his family in Greece were victims of enemy persecution during the war.

This affidavit is being delivered to the above-mentioned Mr. Benvenisti to be used by him with the immigration authorities.

Dr. ISAAC ALCALAY, *Chief Rabbi.*

NATIONAL COUNCIL OF JEWISH WOMEN, INC.,
BROOKLYN SECTION,
Brooklyn, N. Y., June 3, 1955.

Re Salomon Benveniste
Senator IRVING M. IVES,
Senate Office Building, Washington, D. C.

DEAR SENATOR IVES: On behalf of Mr. Salomon Benveniste we write you, hoping that you will introduce a private bill so that he may become a legal resident of the United States.

Mr. Benveniste, born 35 years ago in Cavala, Greece, is under an order of deportation. The Immigration and Naturalization Service found that he was not in possession of a valid immigration visa at the time of his entry into the United States and that he failed to furnish notification of his address without reasonable excuse. He holds a Greek passport and therefore the danger of deportation is actual and imminent. He is married to an American citizen. His wife Clarisse is pregnant and is utterly dependent upon him. Mr. Benveniste has been self-supporting and since the time of his marriage which took place on March 22, 1954, in Los Angeles, he has supported his wife. He has not been convicted of any offense under Federal or State law nor has he engaged in any activities which might be interpreted in any fashion to be injurious to the American public.

Mr. Benveniste and his family were taken in custody during World War II by the Nazi military authorities then occupying Greece. His father, mother, 2 brothers and 2 sisters were killed. He is the sole survivor. In a concentration camp in Bulgaria he was violently beaten so that his hearing was permanently and seriously impaired. With his condition and the economic situation in Greece, in the postwar years, Mr. Benveniste was unsuccessful in maintaining himself.

In November 1949 he left Greece for Israel with a valid Greek passport. He quickly ascertained that his handicap and the economic conditions in that new country made it impossible for him to maintain himself.

He had learned from a doctor in Athens that there might be improvement of his ear condition with surgery with the result that he would not be so handicapped and could again hope to be self-sustaining. He

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was informed that the facilities existed only in the United States for in the United States marvelous medical advances had been made in this field.

He consequently shipped out as a seaman and entered Baltimore, Md., on February 15, 1950. As soon as he was able to earn money in this country he placed himself in the care of a doctor for treatment of his condition with the ultimate hope that he might be cured of his seriously handicapping condition. Despite his handicap he was enabled fairly soon to obtain employment. By the summer of 1952 he had acquired sufficient funds to pay for his operation which was recommended by the Presbyterian Hospital and to sustain himself during the period of several months of rehabilitation when he would not be able to work. He continued clinic attendance and within about 7 months after operation, which took place in about September or October 1952, there appeared to be only slight improvement in his hearing. He was informed that further operation was both dangerous and that there was scant possibility of further improvement.

Mr. Benveniste continued in fairly regular employment. Upon medical advice that a warmer climate would be helpful to his condition, Mr. Benveniste left New York in October 1953 for California with a way stop of about a month in Detroit, Mich., where he had friends and relatives. In Detroit, he met the future Mrs. Benveniste, an American citizen by birth. About 2 months after his own arrival in California, the couple having fixed their resolve upon matrimony, Mr. Benveniste then sent his future wife fare money to come to California, which she did some time in February 1954. The marriage was celebrated on March 22, 1954. The couple had been in New York from December 1954 until the end of March 1955 with the express permission of the Immigration and Naturalization Service. Because of the imminence of Mr. Benveniste's deportation and his wife's pregnancy, he arranged for her to return to California to be with her mother.

He was served with a warrant by the Immigration and Naturalization Service in California on March 10, 1954, provided from his own funds $700 on the $1,000 bond that was requested of him. The rest he borrowed.

The final order of deportation was entered against him December 28, 1954. He is under order to depart within 6 months after the entry date of the above noted order. The Board of Immigration Appeals had on November 2, 1954, denied his application for voluntary departure and to reopen the deportation proceeding. A petition to reopen to permit him to file for adjustment of status under section 6 of the Refugee Relief Act was similarly denied.

At his deportation proceeding Mr. Benveniste showed that the first 2 years of his presence in this country he was not aware of registration provision of the law. It does appear that thereafter when he became aware of his obligation to report to government he was unable to think clearly, concerned as he was about his health, and the unsuccessful attempts to improve his hearing.

To us, the compassionate aspects in this situation are strong. Mr. Benveniste, despite his handicap and the inability to be self-sustaining in his homeland and in Israel, has demonstrated, in the American environment, an ability to be self-sustaining and to provide for his American-born wife. He offers every prospect of being able

to continue this responsibility for the anticipated enlarged family. His return to Greece would leave his wife completely without means to support herself and the awaited child and would leave Mr. Benveniste with no prospect of continuing the rehabilitation he had so happily experienced in this country.

We see no mode of relief open to him to adjust his status. Nor do we see any opportunity for him to immigrate to the United States because of the nature of the deportation order. The only possibility of his being in this country as a husband and father and breadwinner for his family is through the introduction and passage of a private bill.

We hope that you will be of assistance to Mr. Benveniste.

Sincerely yours,

THERESA NATHANSON,
Case Consultant.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2271) as amended, should be enacted.

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Calendar No. 1833

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1809

MR. AND MRS. THOMAS V. COMPTON

APRIL 23 (legislative day, APRIL 9), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1866]

The Committee on the Judiciary, to which was referred the bill, (H. R. 1866) for the relief of Mr. and Mrs. Thomas V. Compton, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, line 7, strike out "in excess of 10 per centum thereof".

PURPOSE

The purpose of this proposed legislation, as amended, is to pay to Mr. and Mrs. Thomas V. Compton, Clarksville, Va., jointly, the sum of $6,000. The payment of such sum shall be in full settlement of all claims of Mr. and Mrs. Compton against the United States by reason of decline in value since June 1, 1947, of business property owned and operated by the claimants near Clarksville, Va., caused by loss of business and police protection due to relocation of Highway 15 near Clarksville, Va., necessitated by work done at the John A. Kerr Dam and Reservoir project on the Roanoke River, commonly referred to as Buggs Island Lake, such work having been performed by the Corps of Engineers, Department of the Army.

STATEMENT

A hearing was held on H. R. 1866 on April 19, 1955, before a subcommittee of the Senate Judiciary Committee.

The claimants, Mr. and Mrs. Thomas V. Compton, are the owners of certain commercial property on United States Highway No. 15,

just south of Clarksville, Va., consisting of 4.7 acres of land fronting on the highway, a roadside service station, grocery store, ice business, and trailer parking lot.

In the construction of the John A. Kerr Dam and Reservoir, commonly referred to in the locality as the Buggs Island Lake, the Corps of Engineers of the Department of the Army acquired certain property on the south bank of the Roanoke River below Clarksville, Va. This area subsequently was flooded and it became necessary to relocate United States Highway No. 15. While a short connecting road was contructed between the old and new United States Highway No. 15, the original United States Highway No. 15 between the Blue Creek and Gassy Point arms of the reservoir no longer is extensively used for travel by through traffic, since this portion of the highway is cut off by waters of the reservoir.

The Compton property is located on this now unused portion of United States Highway No. 15.

Before the alteration of the highway route as just related the Comptons enjoyed a wholesome patronage from the workers of Robbins Mills. Prior to the closing of the highway, some 250 of these workers passed the Compton's store going to and from work each day. When the old highway was in extensive usage, it was only 1.4 miles from Compton's store to the post office. Now this distance is extended to 3.4 miles, making the round trip approximately 7 miles. With the shorter distance, Mr. Compton enjoyed a voluminous business throughout the summer from Clarksville citizens. This business has been almost completely destroyed because it would be impractical to make the 7-mile trip presently required to purchase merchandise which the Comptons offer for sale.

The relocation of the United States Highway No. 15 makes it necessary for the claimants to purchase real estate adjacent to the new United States Highway No. 15, and reestablish their various enterprises on this new location or face a continuation of a very serious loss of income as a result of the relocation of this highway.

The Department of the Army, while acknowledging that the claimants have been damaged, takes the position that such damages constitute a burden which must ordinarily be borne by the property owner as one of the risks of ownership and are in the same category legally as damages arising as a result of construction of many types of Government projects where there is no actual physical taking by the Government of the property alleged to be damaged. Such damages in the view of the Department of the Army are not compensable by the Government as a matter of law.

The Department of Justice takes the same position with reference to this claim as adopted by the Department of the Army.

Notwithstanding this, it is pointed out by the claimants that at least one other citizen, a Mr. Buchanan, has been compensated in the sum of $14,000, as a result of damage by flooding in this vicinity. Moreover, claimant's property, according to testimony adduced, is the only other commercial property damaged by this flooding operation. These facts, together with the fact that Mr. and Mrs. Compton seek only such relief through this bill as will enable them to cover the actual cost of acquiring a new business site on the new United States Highway No. 15, together with the moving of their business buildings to the new location, move this committee to recommend, after a careful

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review of the testimony presented, and the attached documents, that H. R. 1866, as amended, be favorably considered.

Attached hereto and made a part hereof is the report of the Department of Justice submitted in connection with the instant claim. Also attached is the report of the Department of the Army submitted in connection with a similar bill of the 83d Congress, and other evidentiary data relating to this claim.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington 25, D. C., March 24, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: This will refer to the bill (H. R. 1866) for the relief of Mr. and Mrs. Thomas V. Compton, which was passed by the House on March 15, 1955, and subsequently referred to your committee for consideration.

The bill would authorize and direct the Secretary of the Treasury to pay the sum of $6,000 to Mr. and Mrs. Compton "in full settlement of all claims * * * against the United States by reason of the decline in value since June 1, 1947, of business property located near Clarksville, Va. * * * caused by loss of business and police protection due to the relocation of Highway 15 * * * necessitated by work done at Buggs Island Lake by the Corps of Engineers, Department of the Army."

The essential facts which form the basis of this claim do not appear to be in dispute. The Comptons own 4.7 acres of land, fronting on United States Highway 15. On this tract they had established a mercantile business in the nature of a roadside service station, grocery store, and trailer parking lot. In connection with the development of the John A. Kerr Dam and Reservoir project on the Roanoke River, a portion of Highway 15, several miles distant from the Compton property, was apparently to be covered by reservoir water. The highway was therefore relocated to avoid the water, although the old highway remained usable up to and beyond the Compton property, and a short connecting road was built to the new highway in order to provide continued access to the Compton and other properties. There is no indication that the Compton property was physically damaged in any way by the Government project. Whatever losses were suffered by claimants in this case would appear to have resulted solely from the relocation of Highway 15.

It is a well-established rule of law that loss of profits, damage to goodwill, and similar consequential losses due to highway relocation are not recoverable from the Government (*United States ex rel. T. V. A.* v. *Powelson*, 319 U. S. 266, 281–282 (1943); *United States* v. *Petty Motor Co.*, 327 U. S. 372 (1945); *Kellettville Gas Co.* v. *United States*, 56 F. Supp. 919, 922 (W. D. Pa., 1944); *Deepe* v. *United States*, 103 Colo.). There are innumerable examples of diversion of business as a result of highway relocations, ranging from the simple situation of a filling station being isolated by a road-straightening project to the case in which a whole town is bypassed by a modern throughway project. The specific purpose of each of these projects is usually to divert traffic along a new route, even though in some instances the old route is maintained for the convenience of local residents.

The possible ramifications of this claim, as a precedent, are enormous. In almost all sizable Federal projects there is an unavoidable change in the highway pattern of the area and hence a diversion of traffic from one route to another with consequent loss of customers to specific businesses. Although Government projects normally increase business activity in the area of their location, and thus over the years greatly enhance land and business values, particular businesses inevitably suffer certain immediate and indirect losses. If the Federal Government is to be responsible for reimbursing all such indirect losses, the cost of maintaining Federal projects will be immeasurably increased. Once such losses are recognized as compensable, it is apparent that large numbers of individuals who are affected in one manner or another by Federal projects will besiege the Congress for private relief. Moreover, there would appear to be no rational basis for distinguishing this claim from the claims of thousands of others who have suffered similar losses in the past.

Accordingly, the Department of Justice is opposed to the enactment of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

EXCERPTS FROM STATEMENT IN HOUSE REPORT

The flooding by the Government is the direct cause for cutting off the old Highway No. 15 to anyone traveling from north to south or from south to north. This flooding not only cut off the trade that could still have traversed the old highway except for the flooding, but it also cut off the trade enjoyed by the Comptons with the wage earners of Robbins Mill as they traveled to and from their work daily. These workers have been compelled by said flooding to take a new route that carries them far away from the Comptons' business, and this flooding makes a new route a necessity and not a matter of choice.

It develops that heretofore a Mr. Buchanan had business property which the Government evidently felt had been damaged by flooding although the Buchanan property was not under water and will never be under water, but in recognition of that damage, the Government acquired and paid approximately $14,000 for the Buchanan property. It appeared in the hearing that the Comptons could buy a lot adjacent to the new Highway No. 15, comparable to their old lot, for $5,000. Also that they could have their buildings removed to the new location for approximately $2,500, making an outlay of $7,500; that his old property with the buildings removed would have a value of $1,500. Consequently, it would appear that if $6,000 was paid to the Comptons, and the money used to buy a new location and to remove their buildings from the old locations to the new, this would practically cure the matter of damages by the parties.

The committee believes, however, that $6,000 is fair compensation to Mr. and Mrs. Compton, and recommends favorable consideration of the bill which has been amended to read for that amount.

DEPARTMENT OF THE ARMY,
Washington, D. C., July 8, 1953.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of the Army for the views of the Department of the Army, with respect to H. R. 4281, 83d Congress, a bill for the relief of Mr. and Mrs. Thomas V. Compton.

The Department of the Army does not favor the enactment of the above-mentioned bill.

The purpose of this measure is to authorize and direct the Secretary of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, to Mr. and Mrs. Thomas V Compton, Clarksville, Va., jointly, the sum of $18,000 in full settlement of all claims of Mr. and Mrs. Compton against the United States by reason of the decline in value since June 1, 1947, of business property located near Clarksville, Va., and owned and operated by Mr. and Mrs. Compton.

The Comptons own commercial property on the portion of United States Highway No. 15, just south of Clarksville, Va., which has been relocated because of the development of the John A. Kerr Dam and Reservoir project on the Roanoke River. The property consists of 4.7 acres of land fronting on the highway, a roadside service station, grocery store, and trailer parking lot. The decline in value is attributed to loss of business and police protection because of the relocation of United States Highway No. 15. The portion of the old highway along which the Compton property is located remains usable, although cut by the waters of the reservoir at points several miles distant from the Compton property. A short connecting road was built between the old and the new highways to provide continued access to the property owned by the Comptons and by others in the vicinity, and to the adjacent reaches of the reservoir. Notwithstanding the fact that access to United States Highway No. 15 from the Compton property was provided, the volume of traffic on the old road has diminished and the opportunity for sales to through traffic has been eliminated.

It is apparent that the Comptons have sustained some damage due to the relocation of U. S. Highway No. 15. The extent and nature of these damages, however, are highly speculative and conjectural and are within the class of dam-

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ages legally defined as consequential damages which ordinarily are not compensable by the Government as a matter of law. Such damages constitute a burden which must ordinarily be borne by the property owner as one of the risks of ownership and are in the same category legally as damages arising as a result of necessary relocations of public highways required in the development of many types of Government projects where there is no actual physical taking by the Government of the property alleged to be damaged.

Inasmuch as there exists no legal liability on the part of the Government to compensate the Comptons for the damage sustained by them it appears that if they are to be compensated, legislative authority such as that which H. R. 4281 is designed to provide or general legislatoin embracing all like circumstances must be provided. In this connection it is observed that other commercial properties are located a short distance from the Compton property and may be presumed to have been similarly damaged.

The sum of $18,000 provided for in the bill is understood to be equal to an offer for the property the Comptons received in 1948, and consequently is the basis for their restimate of the damage sustained. In the event the enactment of H. R. 4281 is favorably considered, it is recommended that the bill be amended to provide for the payment of a sum equal to the difference between the fair appraised value of the Comptons' property on June 1, 1947, and the date of passage of the bill as determined by the Secretary of the Army or his designated representatives.

The enactment of the bill in its present form would involve an expenditure of Federal funds in the amount of $18,000.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

STATEMENT OF FACTS

Mr. and Mrs. T. V. Compton purchased a piece of property facing old Highway 15 on March 14, 1945. This property had a 200-foot front and is 400 feet deep. On April 1, 1945, Mr. Compton opened a general merchandise store and an ice house on the above-described property and began to build what was to be their future home and a permanently established business. At this time there had been no reference whatever relative to any change by the State or Federal Governments of Highway 15 and when establishing his business Mr. Compton did so with the idea in mind that he could eventually build a fine patronage from highway travel.

At a later date title to this property was vested in the name of Mrs. T. V. Compton by her husband and Mr. Compton operated a place of business placed thereon. At the opening of this business it was a trying period for both Mr. and Mrs. Compton, they having to sleep and live in makeshift quarters in the rear of the store. After placing all of their money into the purchase of the property these people were broke and were forced to borrow $200 with which to partially stock their shelves.

Since April 1, 1945, Mr. and Mrs. Compton have worked tirelessly and prior to the relocation of Highway 15 had built their business into one that provided a comfortable livelihood for their family of three. On a separate sheet you will find the exact gross income of the T. V. Compton store from April 1, 1945, up to and including March 12, 1953. A careful examination of these figures will clearly show that since the latter part of August 1952, when the bridge was taken out on old Highway 15 between Clarksville and the T. V. Compton store, that the business has dropped off to where it is impossible for this family to make a living. Mr. Compton has been forced to accept other employment to provide a living for his family while Mrs. Compton continues to operate the store and make whatever possible from meager sales.

A copy of a letter written by Col. W. F. Powers, district engineer, Norfolk district, Army Corps of Engineers, to you, and attached herewith clearly shows that the Army engineers admit damaging Mr. and Mrs. Compton by the relocation of Highway 15 and this letter further infers that the Army engineers will oppose any relief bill for Mr. and Mrs. Compton because of the fact that a precedent would be established which would invite numerous other claims of a similar nature. This matter of precedent is discussed on another sheet attached to this statement of facts.

Mr. and Mrs. Compton would be very happy to have the Federal Government acquire their property in the same manner used in acquiring other property affected by the filling of Buggs Island Lake. They are not asking for any compensation or grant from the Federal Government. They are only asking for that to which they are fully entitled and I feel sure their claim is a just one as there are numerous other claims which have been settled by the Federal Government in the Buggs Island Dam area that are so akin to the case of Mr. and Mrs. Compton that it would be impossible to divorce them merely by using the phraseology of consequential damage and precedent. This does not appear to be a consequential damage but rather a direct damage and certainly precedent has no place in a discussion of settlement since I will clearly show that precedent has already been set by the Army Corps of Engineers. In the opinion of Mr. and Mrs. Compton, a refusal of their claim for damages would surely set a precedent, and that precedent would be that it is the policy of the Federal Government in the building of a Federal project to damage and destroy taxpaying American citizens' means of a livelihood.

It has been suggested by the Army Corps of Engineers that Mr. Compton relocate himself. This is a fine suggestion and Mr. Compton would be happy to relocate himself if the Federal Government will pay him for the business they have destroyed, as they did with other parties similarly affected. Mr. Compton refused $20,000 for his property and business no longer than 3 years ago. Today he could not get an offer even close to that figure that would enable him to relocate on the new Highway 15. Mr. Compton has had an estimate submitted by a reputable contractor whereby he could not possibly secure the right frontage and replace his business for a figure of less than $19,225. Others who have relocated themselves on this highway have been able to do so simply because they were paid very high figures for their old property. The case of Mr. H. D. Buchanan might be referred to in this instance since he has recently opened a new place of business after having his old business acquired by the Government for approximately $14,000. I believe I am correct in stating that this former business site of Mr. Buchanan's will never be under water no more so than Mr. Compton's present place of business.

Mr. Compton, prior to the relocation of Highway 15, enjoyed a wholesome patronage from the workers of Robbins Mills. Some 250 of these workers passed Mr. Compton's store going to work and returning to their homes each day prior to the closing of the highway and a new access opened to the mill. This new access does not pass Mr. Compton's place of business but does lead to new Highway 15 whereby these workers pass a similar place of business recently established and which naturally enjoys the patronage formerly enjoyed by Mr. Compton prior to the closing of the old highway.

Furthermore, it was 1.4 miles from Mr. Compton's store to the post office in Clarksville, Va., when the old highway was used as a means of travel. On the relocated highway the distance from Mr. Compton's store to the post office in Clarksville is 3.4 miles. With a shorter distance, Mr. Compton enjoyed a voluminous ice business throughout the summer from Clarksville citizens. This business has been destroyed because it would be unwise and uneconomical for his customers to drive 7 miles, which would be necessary in the round trip, to purchase ice whereas the distance of a round trip was only 2½ miles before.

Another important actor which has hurt the value of Mr. Compton's property is the matter of police protection. Before the closing of old Highway 15, Mr. Compton was privileged to police protection from the town of Clarksville through special permission of the town council. It is true his store was located fourtenths of a mile beyond the 1-mile limit usually patroled by police officers in a town, but since the distance was so short and other business establishments were close by this protection was extended. Now, since the distance from Clarksville is 3.4 miles, the only police protection afforded is that of the sheriff's office in Boydton, Va., a distance of 14 miles from Mr. Compton's store. And this protection is needed more today than before, since a place of business has located itself in a close proximity to Mr. Compton's store that draws large gatherings of colored people every Saturday and Sunday.

There are many other pertinent facts in the case of Mr. Compton that would justify payment of damages by the Army engineers or relief by the Congress. I feel to recite these further facts would be of no value since it would appear the foregoing definitely shows direct damage to Mr. Compton.

T. V. COMPTON.
By J. S. BANNISTER.

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CORPS OF ENGINEERS, UNITED STATES ARMY,
OFFICE OF THE DISTRICT ENGINEER, NORFOLK DISTRICT,
Norfolk 1, Va., October 30, 1952.

Hon. W. M. ABBITT, M. C.,
House of Representatives, Washington, D. C.

DEAR MR. ABBITT: Receipt is acknowledged of your letter of October 24, concerning the matter of damages to Mr. T. V. Compton's business property on highway 15, south of Clarksville.

The requirements of the Government for acquiring property along the southern bank of the river below Clarksville have been such that Highway 15 has had to be relocated farther back from the river, and as a consequence a portion of the old highway between the Blue Creek and Grassy Creek arms of the reservoir will no longer be traveled by through traffic. Mr. Compton's property is located on this stretch of the old highway and of course any business which he may have obtained from through traffic will no longer be available to him. However, since there is no justification for the Government to acquire Mr. Compton's property, I am not in a position to purchase any of his rights. The damages, which he alleges, are defined in law as consequential and there is no authority for the Corps of Engineers to make any reimbursement therefor. During a recent discussion of this matter with Mr. Compton, I pointed out these facts to him and further suggested that he secure legal advice to verify my statements.

I regret that Mr. Compton may suffer as an indirect consequence of the construction of the project but I cannot find any sound basis for working out a mutually satisfactory adjustment. Although it may seem unfair that there is no method of compensating Mr. Compton, there similarly would not be any method of compensating the Government should his business pick up or improve because of the recreational utilization of the reservoir in his vicinity.

Should a special bill be presented to Congress for the relief of Mr. Compton, I believe that the Secretary of the Army would be called upon by the appropriate committee of the Congress for a recommendation in the matter. This being the case you will appreciate that I cannot properly forecast the probable action of the Secretary prior to the matter being reviewed by higher authority. In answer to your request for my view in the matter, my personal opinion is that payment for alleged damages of this nature could not very well be recommended because of the fact that a precedent would be established which would invite numerous other claims of a similar nature and would in effect be a reversal of present law on the subject of consequential damages.

I truly sympathize with Mr. Compton in his predicament but I feel that many similar cases have arisen in connection with the relocation of the highways and railroads of the country. I am sorry that I cannot offer you any constructive suggestions in connection with this matter, but will be pleased to discuss it with you further at any time you may desire.

Sincerely yours,

W. F. POWERS,
Colonel, Corps of Engineers, District Engineer.

CONSEQUENTIAL DAMAGE

With reference to consequential damages as referred to by the Army Corps of Engineers repeatedly in the case of Mr. Compton, I attach herewith copy of a letter addressed to Col. W. F. Powers under date of January 9, 1953, and signed by James S. Bannister, editor of the Clarksville Times.

This communication was never answered in writing but Colonel Powers informed the writer that he realized Mr. Compton had been damaged and felt very sorry that there was no way in which he could make compensation for damages. Colonel Powers also, at that time, informed the writer that he would not offer any obstacle in the way of Mr. Compton obtaining relief through Congress. Mr. and Mrs. Compton have also been told by Colonel Powers that he felt they were entitled to relief and advised them to obtain counsel to get this relief and wished them the best of luck in their efforts.

It is the policy, and a long-established policy, and a deplorable policy of the Army engineers to make statements, promises, commitments, and give false impressions by word of mouth and refuse to make such promises, etc., in written form with proper signatures attached. There is no disputing this statement as hundreds of cases will clearly show in the acquisition of land in the Buggs Island Reservoir. One of the reasons that the case of Mr. Compton has not been brought out more fully up to this time is because of promises made by various representa-

tives of the Army engineers that left Mr. and Mrs. Compton with a false impression that there still might be a hope for settlement without lengthy disputes.

It might appear wise for the regulations which govern the Army engineers in the building of Federal projects be reviewed that the mighty weapon called consequential be taken therefrom in protection of the American people. It is of consequence to every American that each citizen be treated fairly and without prejudice and again we repeat it is deplorable that regulations exist that serve as a weapon of destruction against honest taxpayers.

JANUARY 9, 1953.

Col. W. F. POWERS,
District Engineer, Norfolk District,
Army Corps of Engineers, Norfolk, Va.

DEAR BILL: I hope and trust the new year will be a bright and prosperous one for you and the corps. I wish to express my appreciation of your efforts during 1952, and above all, for your willingness to understand many of the various problems I have brought to your attention.

At the request of several citizens here in Clarksville I have had a long talk with Mr. T. V. Compton and have examined his books for the past several years, making a close observation of the virtual collapse of this business since Highway 15 was relocated. It certainly appears that this man has taken a terrific beating from a project not of his own choice.

I am well aware that there is nothing within your regulations that will permit you to pay for consequential damages; equally aware that this case has been termed one to be placed in such a category. I say this to save Lonnie the trouble of reciting that lengthy explanation once again. But, on the surface, it would appear that the case of Mr. Compton is so akin to the case of Maxey's Club 58 that it would seem impossible to divorce the two, taking fairness into consideration.

I have read a letter from Congressman Abbitt to Mr. Compton under date of October 31, which enclosed a copy of your letter to Mr. Abbitt under date of October 30, 1952, relative to this matter. While your letter deplored the damage to Mr. Compton and recognized this damage, you were clear in your explanation that it was regrettable you could do nothing about the matter. The part that I am at a loss to understand is that you expressed the opinion that relief could not be obtained in Congress because of setting a precedent, and that you would not see where the Army engineers would approve relief for this man. I hope that I have made an incorrect interpretation of your letter for I cannot believe that you would hinder Mr. Compton from trying to receive just compensation, if you found you could not offer that relief yourself according to the regulations by which you are bound.

I have this date written Mr. Abbitt a lengthy letter citing the damages suffered by Mr. Compton. His business since September is approximately one-third what it was before the rerouted Highway 15 was opened. Mr. Compton has been advised to sell out and find a new location for his business. Such advice comes cheap when it concerns a second party, but rather expensive when it strikes home. In the first place Mr. Compton invested in this property at a high figure due to the advantages the site offered from its location on Highway 15. He constructed and made many improvements to the premises with a vision to continued patronage offered by highway travelers. His business has not been so great as to allow him to amass a sum of money that would leave him in a position to relocate. He is bound in this by what he could realize from his present property, which has been rendered almost worthless by a Federal project. This damage occurred by a severance from his property of a heavily traveled highway. I just can't analyze that as consequential, rather as severance, since the lifeline of this man's business was severed from him. The old highway, although not belonging to him in fee simple, was the real value of the business. This has been taken so it would appear the man deserves some compensation, just as Maxey's Club 58 was allowed damages for an act that decreased their business.

I will be extremely grateful if you could look into this matter further and possibly discover that there is a man hurt terribly by the Federal Government, that this man is a taxpaying citizen and is entitled to the same consideration that has been given many others. And if you find there is nothing within your power to do, then certainly see that the Army engineers do not obstruct efforts for a just and equitable relief in Congress.

Hoping to see you soon. With kindest personal regards, I am

Sincerely yours,

JAMES S. BANNISTER.

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SEVERANCE

It would appear that Mr. Compton has a just claim for severance damages from the Army Corps of Engineers due to the fact that the Army engineers did sever from Mr. Compton his main source of patronage, Highway 15, which went by his place of business prior to August 26, 1952.

Naturally, the Army Corps of Engineers do not recognize this claim for damages because they feel they did not sever any portion of Mr. Compton's property from the remaining portion and for that reason could not offer him any relief in his predicament. On the fact of such a statement it would seem foolish to imagine the average citizen would concur in such an opinion.

It appears, without doubt, that the Army engineers used technicalities of the most vague nature in attempting to compensate individuals for damages in certain instances. With this thought in mind, it might be pertinent to use a similar technicality in showing that the Army engineers have actually severed from Compton's propeity a portion of his property that damaged severely the remaining portion. We are referring to old Highway 15 and offering the fact that Mr. Compton is now and has been for several years a taxpaying citizen and as such was and is now a part owner of this highway and all other highways in the State of Virginia. Every taxpayer in Virginia is a coowner in fee simple of every highway in the State. This may appear as a rather vague and inconsequential technicality but a thorough examination of some of the technicalities used by the Army engineers will show even more vagueness than this.

I refer you to the case of Mr. I. E. Maxey of Maxey's Club 58, located on Highway 58, 6 miles west of Clarksville. I recite this case to show where even more than severance was paid by the Army engineers. Under the guise of severance damage the Army engineers paid a large sum of money for damage to business. That is exactly what we are asking for in the case of Mr. Compton. I believe the records will clearly show in the case of Maxey's Club 58 that the Government first offered approximately $2,500 for a portion of Maxey's Club 58 property which would be taken for the relocation of Highway 58 at that point. Mr. Maxey refused this offer made by appraisers of the Army engineers and after the Army engineers had made a thorough study of Mr. Maxey's volume of business over a period of years, and recognizing that Mr. Maxey's business might suffer in the process, did pay Mr. Maxey approximately $8,000 as damages. Surely we cannot and remain fair, think other than that the Army engineers paid Mr. Maxey approximately $5,000 for damage to his business, and even with the knowledge that Mr. Maxey's business would be increased instead of decreased.

Now it would appear that Mr. Compton is denied similar recompense by his Government on a technicality when the actual severance is just as clear in the case of Mr. Compton as in the case of Maxey's Club 58.

There are other similar cases where severance could be used in comparison with Mr. Compton's claim but it would seem of no consequence to become lengthy and repetitious here when the fact is clearly established in the one case recited above.

PRECEDENT

It would seem that the biggest fear of the Army Corps of Engineers is the fear of setting precedent. Precedent was set on the settlement of Mr. Compton's claim by the settlement of Mr. Maxey's claim. We feel quite sure that the United States Government does not wish a precedent set of damaging its taxpaying citizens without just compensation for damages. That is a precedent which violates the Constitution of the United States of America and voids the protection offered every American under the Bill of Rights and it is beyond comprehension to believe that the Army engineers, a branch of our Federal Government, would insist upon being a party to establishing and keeping operative such an un-American precedent.

The courts have already ruled on one case whereby a precedent was set according to the Army engineers. That was in the claims of the town of Clarksville where the courts would not recognize the right of a branch of the Federal Government to injure a group of people, even if the injury was of an inconsequential nature as claimed by the Army engineers. Action of the United States Supreme Court has upheld the ruling of the appellate court that the Federal Government is liable and must pay damages when they have damaged the complainant. Even if we admit that the damage of Mr. Compton is inconsequential, or consequential, it is a damage by the Federal Government and so admitted by the Army engineers and should be settled by a precedent already set.

Gross income of the T. V. Compton store since Apr. 1, 1945

TOTAL OF EACH MONTH FOR 1945

April	$519.98
May	1,322.49
June	1,620.98
July	1,760.08
August	1,696.85
September	2,279.98
October	2,314.21
November	1,990.99
December	2,543.18
	16,048.74

TOTAL OF EACH MONTH FOR 1946

January	1,661.51
February	1,374.39
March	1,372.99
April	1,694.49
May	1,704.46
June	1,913.36
July	2,719.78
August	2,413.10
September	1,865.91
October	2,332.95
November	1,678.05
December	1,782.99
	22,513.98

TOTAL OF EACH MONTH FOR 1947

January	1,505.74
February	1,242.75
March	950.64
April	975.16
May	1,250.36
June	1,486.13
July	1,497.40
August	816.19
September	1,045.80
October	1,153.01
November	1,047.90
December	965.54
	13,936.62

TOTAL OF EACH MONTH FOR 1948

January	816.38
February	729.43
March	900.13
April	976.04
May	1,322.55
June	1,183.23
July	1,121.35
August	735.92
September	935.48
October	936.22
November	616.68
December	607.93
	10,881.34

TOTAL OF EACH MONTH FOR 1949

January	480.43
February	350.58
March	680.93
April	678.85

TOTAL OF EACH MONTH FOR 1949—CON.

May	$768.77
June	722.22
July	1,236.38
August	968.57
September	1,223.38
October	1,532.55
November	1,574.87
December	1,617.15
	11,834.68

TOTAL OF EACH MONTH FOR 1950

January	1,076.03
February	1,558.88
March	1,624.50
April	1,930.53
May	2,156.51
June	2,157.23
July	2,254.04
August	2,236.78
September	3,799.44
October	3,736.01
November	3,782.95
December	2,796.21
	29,100.01

TOTAL OF EACH MONTH FOR 1951

January	2,780.30
February	2,341.54
March	4,031.94
April	3,553.14
May	3,593.53
June	3,670.12
July	3,643.00
August	3,372.02
September	2,954.60
October	3,647.17
November	3,325.14
December	2,052.97
	38,965.47

TOTAL OF EACH MONTH FOR 1952

January	2,469.64
February	2,464.67
March	2,730.58
April	3,139.22
May	3,502.14
June	2,356.72
July	2,049.42
August	1,925.34
September	1,271.36
October	1,391.47
November	1,249.72
December	777.58
	25,327.86

TOTAL OF EACH MONTH FOR 1953

January	744.55
February	546.53
March 1–12	99.94
	1,391.02

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I, Thomas V. Compton, hereby certify that the foregoing statements are true to the best of my knowledge and belief.

T. V. COMPTON.

State of Virginia, County of Mecklenburg.
Sworn to and subscribed before me this 13th day of July 1953.
[SEAL] EVA H. BANNISTER, *Notary Public.*
My commission expires December 31, 1955.

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Calendar No. 1835

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1811

M. B. HUGGINS, JR.

APRIL 23 (legislative day, APRIL 9), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2169]

The Committee on the Judiciary, to which was referred the bill (S. 2169) for the relief of M. B. Huggins, Jr., having considered the same, reports favorably thereon, with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

1. On page 1, line 6, strike the figures "$5,000" and insert in lieu thereof the figures "$8,196.37".
2. On page 2, lines 3 and 4, strike the words "in excess of 10 per centum thereof".

PURPOSE OF AMENDMENT

1. The purpose of the first amendment is to increase the award so that it will be commensurate with the claimant's loss.
2. The purpose of the second amendment is to prohibit the payment of attorney's fees from the award provided in this legislation.

PURPOSE

The purpose of the proposed legislation, as amended, is to pay the sum of $8,196.37 to Mr. M. B. Huggins, Jr., of Timmonsville, S. C., in full satisfaction of his claim against the United States for compensation for medical expenses and loss of earnings incurred as the result of an injury suffered by him on March 4, 1955, while he was engaged in assisting 2 investigators of the Alcohol and Tobacco Tax Division of the Internal Revenue Service in effecting the arrest of an alcohol-tax violator.

90006°—57 S. Rept., 84–2, vol. 6——83

STATEMENT

On March 4, 1955, Mr. M. B. Huggins, Jr., a former peace officer of the State of South Carolina, reported three illicit distilleries to investigators of the Alcohol and Tobacco Tax Unit of the Internal Revenue Service. At the request of these investigators, Mr. Huggins accompanied them on an investigation of the distilleries and assisted in the seizure of one. The other two distilleries were located and left for future investigation. Having completed this assistance, Mr. Huggins continued with the investigators to another point to investigate a report received by one of the investigators that a vehicle would pass that point transporting untaxpaid whisky. When the vehicle reached the observation point, it was stopped by the investigators and ordered to drive off to the side of the road and park. Instead of complying with this order, the driver of the vehicle attempted to escape, whereupon the Government officers gave chase. When the suspected vehicle was stopped, the driver was apprehended but the two passengers attempted to escape on foot. One passenger was arrested and the other was pursued by Mr. Huggins. When approximately 15 or 20 yards from the stopped vehicle, the violator being pursued by Mr. Huggins stopped and threw a heavy object at Mr. Huggins which struck him 3 or 4 inches above the knee and resulted in Mr. Huggins sustaining a comminuted fracture of the lower right femur. When Mr. Huggin fell, he fractured his lower left rib and suffered contusions of the chest. Mr. Huggins was later taken to a hospital in Florence, S. C. The records of the infirmary show that the thigh bone was operated on and knitted by the use of 2 plates and 10 screws and that casts were placed on both legs to prevent leverage. At the time of the submission of the report on this legislation by the Treasury Department, Mr. Huggins had incurred hospital expenses of at least $1,726.37, and doctor's bills amounting to $750. It also appeared at that time that further hospitalization and medical treatment would be necessary.

The report of the Treasury Department and the accompanying memorandum points out that at the time of his injury, Mr. Huggins operated a crop-dusting business with headquarters at Timmonsville, S. C., from which he netted an income of approximately $1,000 each month during the period of its operation and that the estimated loss of wages during the period of his incapacity would total approximately $5,000. The report also discloses that the attending physician reports that the accident will result in permanent injury to Mr. Huggins since he will have a moderate limitation to his knee motion hereafter. In view of the foregoing facts, the report of the Treasury Department recommends that some relief be given.

This claim is similar to others presented to the committee in recent years involving the participation in a governmental function by a volunteer who, while so engaged, suffered injury or death. In the 83d Congress, the committee approved legislation (H. R. 1460) awarding the sum of $10,000 to an individual attempting to extinguish fires resulting from a bombing raid at the naval base at Dutch Harbor, Alaska, and who was injured to a degree much more severe than the claimant involved in the instant legislation. (Subsequently, this legislation was vetoed by the President.) In a similar instance in the 82d Congress, the committee approved an award of $5,000 to an

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individual who suffered multiple fractures of his left arm (Private Law 193, 82d Cong.). In the 81st Congress the committee approved legislation in the sum of $5,000 to the widow of an individual who had died while engaged in assisting military authorities in fighting a fire at Fort Benjamin Harrison, Ind. (Private Law 495, 81st Cong.). In view of these several instances in which the committee has recompensed individuals injured while performing services for the Government, although not under Government contract or otherwise in the employment of the Government, the committee recommends favorable consideration of this legislation, as amended.

Attached hereto is the report of the Treasury Department referred to earlier together with a letter from the Secretary of Labor addressed to the Bureau of the Budget under date of September 15, 1955, concerning the proposed legislation.

DECEMBER 16, 1955.

Hon. H. M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 2169, for the relief of M. B. Huggins, Jr.

This bill, if enacted, would authorize the payment to M. B. Huggins, Jr., Timmonsville, S. C., of the sum of $5,000 for an injury suffered by him on March 4, 1955, while assisting two alcohol and tobacco tax investigators in effecting the arrest of violators of the Internal Revenue Code.

On the date of his injury Huggins accompanied two Federal officers to the Santee River causeway on Highway 52 near Charleston, S. C., to investigate a vehicle reported to the investigators to be transporting untaxpaid liquor. The suspected liquor car was stopped but drove away at a high rate of speed and was pursued by the Federal investigators, accompanied by Huggins, for approximately 10 miles. It was stopped in Greeleyville, S. C. Leroy Alvin White, a passenger in the vehicle, fled and was pursued by Mr. Huggins. When some distance from the stopped vehicle White turned and threw a heavy object which struck Huggins' right leg above the knee. This blow broke Huggins' leg and when Huggins fell he fractured his lower left ribs and suffered contusions of his chest. Mr. Huggins was taken to the McLeod Infirmary at Florence, S. C., and is still under treatment at this infirmary.

In view of the fact that Mr. Huggins was injured while assisting Federal officers in the enforcement of Federal laws this Department recommends that some relief be given. There is attached a memorandum setting forth in greater detail the facts in the case.

The Bureau of the Budget has advised that there is no objection to the submission of this report, but has requested that the enclosed copy of a letter from the Department of Labor be made available to your committee.

Very truly yours,

H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

MEMORANDUM RE S. 2169

The bill, if enacted, would authorize and direct the Secretary of the Treasury to pay M. B. Huggins, Jr., of Timmonsville, S. C., the sum of $5,000, this sum to be in full satisfaction of Mr. Huggins' claim against the United States for compensation for medical expenses and loss of earnings incurred as the result of an injury suffered by him on March 4, 1955, while assisting 2 investigators of the Alcohol and Tobacco Tax Unit, Internal Revenue Service, in apprehending liquor-law violators.

The files of the Internal Revenue Service show that on March 4, 1955, M. B. Huggins, a former peace officer of the State of South Carolina, reported three illicit distilleries to Investigators Gene G. Gwynne and Robert W. O'Connor at Charleston, S. C. At the request of the investigators, Mr. Huggins accompanied them on an investigation of the distilleries and assisted in the seizure of one. The other two distilleries were located and left for future investigation. Having completed this assistance Mr. Huggins continued with Investigators Gwynne and O'Connor to the Santee River Causeway on Highway 52 near Charleston, S. C., to investigate a report that Investigator Gwynne had received that a certain vehicle would be transporting untaxpaid whisky. Shortly after the Government car reached the observation point the suspected vehicle occupied by three individuals, was observed on Highway 52. The suspected vehicle was stopped on Santee River bridge No. 2. The operator, identified as one William Sumpter, was ordered to drive off the bridge and park. However, instead of complying with this order Sumpter drove off the bridge at a high rate of speed in an attempt to escape, whereupon the Government officers gave chase. The suspected vehicle was stopped in Greeleyville, S. C., which is a distance of about 10 miles from the Santee River Bridge. When the vehicle was stopped Investigator O'Connor arrested William Sumpter in the vehicle. The two passengers attempted to escape on foot. Ben Brown was apprehended and arrested by Investigator Gwynne. The other passenger, Leroy Alvin White, was pursued by Mr. Huggins and when approximately 15 or 20 yards from the stopped vehicle, White stopped and threw a heavy object at Huggins. The object struck Huggins 3 or 4 inches above the knee and resulted in a comminuted fracture of the lower right femur. When Huggins fell he fractured his lower left ribs and suffered contusions of the chest.

A quantity of 18 gallons of untaxpaid whisky was discovered in the trunk of the automobile operated by Sumpter.

Mr. Huggins was taken to the McLeod Infirmary at Florence, S. C., in an ambulance. The records of the infirmary show that the thigh bone was operated on and knitted by the use of 2 plates and 10 screws, that casts were placed on both legs to prevent leverage, and that such casts were not to be removed until some time in July or August at which time further treatment would be determined. As of June 19, 1955, Mr. Huggins was still in the infirmary and his attending physician stated that he will require an additional 2 or 3 months' hospitalization. The hospital expenses of Mr. Huggins from the date of the accident until June 29, 1955, were $1,726.37. The doctors' bills for the services already rendered and for the 2 months' services that will be required in caring for Mr. Huggins' injury have

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been submitted in the amount of $750. If Mr. Huggins remains in the hospital for 2 additional months, additional hospital expenses in the amount of $720 will be incurred. If required to remain for 3 months the additional cost will be $1,080 (at the rate of $12 per day).

Investigation also discloses that Mr. Huggins operates a crop-dusting business with headquarters at Timmonsville, S. C. This business is seasonal, extending over a period of 5 months each year. Records kept by Mr. Huggins indicate that he nets approximately $1,000 each month during this operation and he estimates that his loss of wages will amount to approximately $5,000 during the period of his incapacity. The attending physician indicates that this accident will result in permanent injury to Mr. Huggins since he will have a moderate limitation to his knee motion.

For the past 20 years M. B. Huggins has assisted Federal officers in enforcing the internal-revenue liquor laws in South Carolina. During this period of time he was a State officer, sometimes in a pay status and sometimes not in a pay status. His commission as a State officer expired January 17, 1955. Mr. Huggins has been paid by the Treasury Department for information furnished Federal officers. At the time of the accident Mr. Huggins was volunteering his services to the Federal officers. He was not under contract nor did he receive any pay for his assistance.

A report of the incident was made to the Employees' Compensation Committee at Atlanta, Ga., and the case is now before the Bureau of Employees' Compensation, United States Labor Department, docketed as case X–966796. It is not known what action the Bureau of Employees' Compensation will take with respect to this case. However, it is doubtful whether Huggins could be deemed to be an employee within the meaning of section 40 (b) of the Federal Employees' Compensation Act.

It has been held (26 Comp. Dec. 1071) that appropriated funds were not available for paying State or municipal officers for injuries received while assisting United States marshals in apprehending violators of the Federal laws. It is possible that this ruling will be construed as applicable to private citizens who are injured while assisting Federal officers on a voluntary basis. However, before giving consideration to this bill the committee may wish to await final action on the claim pending in the Bureau of Employees' Compensation. Unless favorable action can be taken on the claim it would appear that Mr. Huggins cannot obtain financial relief without favorable action by the Congress on this bill.

In view of the fact that Mr. Huggins has assisted Federal officers in the Charleston, S. C., area for the past 20 years and in view of the fact that he was injured while assisting in the enforcement of the internal-revenue laws, the Treasury Department is of the opinion that some relief should be given.

DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, September 15, 1955.

Hon. ROWLAND R. HUGHES,
Director, Bureau of the Budget,
Executive Office of the President, Washington, D. C.

DEAR MR. HUGHES: This is in reply to the request of Mr. Roger W. Jones for my comments on the report by the Department of the Treasury on S. 2169, a bill for the relief of M. B. Huggins, Jr.

This bill, if enacted, would authorize the payment of $5,000 from the Treasury to Mr. Huggins in full satisfaction of his claim against the United States for compensation for medical expenses and loss of earnings as the result of injuries suffered by him on March 4, 1955.

Mr. Huggins was injured while he was assisting two Internal Revenue Service investigators in effecting the arrest of violators of the Internal Revenue Code. At the time of the accident, Mr. Huggins was volunteering his services to the Federal officers. He had formerly been a peace officer of the State of South Carolina and had assisted Federal officers in enforcing the internal-revenue laws in that State for the past 20 years. However, at the time of his injury he was no longer a peace officer of that State.

A claim for compensation under the Federal Employees' Compensation Act has been filed by Mr. Huggins with the Bureau of Employees' Compensation, but this claim has not yet been adjudicated. However, the report of the Department of the Treasury states that it is doubtful whether Huggins could be deemed to be an employee within the meaning of section 40 (b) of the Federal Employees' Compensation Act. Whether he is eligible for benefits under that act cannot definitely be known until a decision is reached on his claim.

Since Mr. Huggins has not exhausted the administrative remedies available to him, I would be opposed to the enactment of a private bill for his relief.

Sincerely yours,

——— ———, *Secretary of Labor.*

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Calendar No. 1836

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1812

FAVORING THE GRANTING OF PERMANENT RESIDENCE TO CERTAIN ALIENS

APRIL 23 (legislative day, APRIL 9), 1956.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. Con. Res. 202]

The Committee on the Judiciary, to which was referred the concurrent resolution (H. Con. Res. 202), favoring the granting of the status of permanent residence in the United States to certain aliens, having considered the same, reports favorably thereon with amendments and recommends that House Concurrent Resolution 202, as amended, do pass.

AMENDMENTS

1. On page 2, strike out line 11.
2. On page 3, strike out lines 16 and 17.
3. On page 4, line 15, strike the name "Gavrilovic" and insert in lieu thereof the name "Gavrilovich".

PURPOSE OF THE CONCURRENT RESOLUTION

The purpose of the concurrent resolution, as amended, is to record congressional approval of the granting of the status of permanent residence in the United States to certain displaced persons whom the Attorney General has determined to be eligible for such privilege under the provisions of section 4 of the Displaced Persons Act of 1948, as amended (62 Stat. 1011; 64 Stat. 219; 50 App. U. S. C. 1953). The purpose of the amendments is to delete the names of three aliens whose cases have been withdrawn by the Attorney General, and to correct the spelling of the name of one alien.

STATEMENT OF FACTS

Section 4 of the Displaced Persons Act of 1948, as amended, provides for adjustment of the immigration status in the cases of certain aliens who establish that they lawfully entered the United States as nonimmigrants under section 3 or as nonquota immigrant students under subsection (e) of section 4 of the Immigration Act of May 26, 1924, as amended. The act provides that if the Attorney General shall, upon consideration of all the facts and circumstances of each case, determine that the alien has been of good moral character for the preceding 5 years and that such alien is qualified under the provisions of said section 4 of the Displaced Persons Act of 1948, as amended, the Attorney General shall report to the Congress all of the pertinent facts in the case. If during the session of the Congress at which a case is reported or prior to the end of the session of the Congress next following the session at which a case is reported, the Congress passes a concurrent resolution stating in substance that it favors the granting of the status of permanent residence to such alien, the Attorney General is authorized, upon receipt of a prescribed fee, to record the admission of the alien for permanent residence as of the date of the alien's last entry into the United States. If prior to the end of the session of the Congress next following the session at which a case is reported, the Congress does not pass such resolution, the Attorney General is required to deport such alien. The act further provides that the number of displaced persons who shall thus be granted the status of permanent residence shall not exceed 15,000. Upon the grant of status of permanent residence to an alien pursuant to said section 4, of the Displaced Persons Act of 1948, as amended, the Secretary of State shall, if the alien was a quota immigrant at the time of entry, reduce by one the immigration quota of the country of the alien's nationality as defined in section 202 of the Immigration and Nationality Act, for the fiscal year then current or the next succeeding fiscal year in which a quota number is available, except that such quota deductions shall be made within certain limitations.

Included in the concurrent resolution, as amended, are 81 names. In each case which is recommended for approval, a check has been made to determine whether or not the alien (*a*) has met the requirements of the law, (*b*) is of good moral character, and (*c*) is possessed of strong equities which would warrant the granting of the status of permanent residence.

The committee, after consideration of all the facts in each case, is of the opinion that the concurrent resolution (H. Con. Res. 202), as amended, do pass.

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Calendar No. 1838

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1814

MRS. WINIFRED A. HUNTER

APRIL 23 (legislative day, APRIL 9), 1956.—Ordered to be printed

Mr. O'MAHONEY, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2008]

The Committee on the Judiciary, to which was referred the bill (S. 2008) for the relief of Winifred A. Hunter, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to authorize and direct the Secretary of the Treasury to pay the sum of $6,500 to Mrs. Winifred A. Hunter, of San Antonio, Tex., in full settlement of all her claims against the United States for reimbursement for damage to her personal and household effects, at Bilbao, Spain, when such effects were shipped on her transfer from the American Embassy at Managua, Nicaragua, to the American Embassy at Madrid, Spain, between December 7, 1946, and March 7, 1947.

STATEMENT

Winifred A. Hunter was an employee of the Foreign Service, Department of State, stationed at Managua, Nicaragua, in 1946, when she received orders to report to her new station at the American Embassy in Madrid, Spain.

Immediately upon receiving such orders, Mrs. Hunter made arrangements to have all of her personal and household effects crated and shipped from Managua to Madrid. Her goods and merchandise were shipped in 2 small wooden lift vans and 2 small boxes, packed with waterproof paper and well reinforced. The shipment arrived at Bilbao, Spain, on December 7, 1946. The claimant's effects remained at Bilbao from December 7, 1946, until March 7, 1947.

The records reveal that there was a lack of sufficient protected storage space for customs merchandise on the dock at Bilbao, with the result that the claimant's effects remained exposed on the docks and left to the ravages of the elements for a period of about 3 months. The boxes and their contents were placed under an enclosure that contained a roof but no protected sides. The area where the goods were stored was subjected to heavy rains, causing extensive water damage to the claimant's goods.

The shipment was ordered by the claimant in Managua and the merchandise was crated and placed in transit from that point without insurance being procured by the claimant. It is her contention that the insurance rates quoted to her in Managua were prohibitive and that she did not possess sufficient funds to meet such charges.

On March 7, 1947, the goods were loaded onto a railway flatcar and arrived in Madrid 8 days later, on March 15, 1947. The goods were then placed in the railway customs enclosure, where they remained until April 28, 1947. On May 2, 1947, they were moved to a private warehouse in Madrid, and on May 5, 1947, the shipment was opened and found to be in a state of incredible ruin from rainwater soak, which had caused rot, rust, and mold, resulting in damage to the entire shipment of belongings of the claimant.

The claimant arrived in Madrid on January 2, 1947, and from that date until May 5, 1947, sought assistance from American Embassy officials in expediting the shipment of her goods. The Embassy officials constantly assured the claimant that her effects were stored where they were free from the ravages of the elements.

Mrs. Hunter filed her claim with the claims board of the State Department subsequent to discovery of the condition of her personal effects, and on September, 23, 1948, the claims board denied the claim on the ground that she was considered to have been negligent, in that she did not insure her effects. The claimant submitted additional evidence and information to the board, and on January 16, 1950, the board reaffirmed its previous decision denying relief to the claimant.

The claims board, in its report, stated that at the time of shipment, insurance at the rate of $1.23 per hundred, covering all risks except breakage, could have been obtained. The board reported that Mrs. Hunter, in writing, related that her property was not insured for the reason that many of her effects were very old and valuable and the value placed on them by insurance companies had always been so high as to make the premiums prohibitive. The claims board concluded that Foreign Service employees are expected to insure their effects if they wish to protect themselves against loss.

The committee deems it important to mention that Mrs. Hunter has informed the committee that she has been advised by Lloyds of London that her losses, including those valued possessions of rare books, paintings, etc., ran over $100,000. However, she made no claim for her collection of books and other valuables but limited her claim before the claims board to the sum of $16,106, and a bill for her relief in the amount of $16,106 was introduced in the House of Representatives. The House of Representatives concluded that, while she was not entitled to the $16,106, she was entitled to a reasonable reimbursement for the actual losses which she sustained, excluding from her overall claim the amounts which were predicated on senti-

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mental and special descriptive value. The House of Representatives, therefore, concluded that she should be reimbursed in the amount of $6,500, the same amount which is recommended in the instant legislation.

The committee notes that the State Department's main objection to the payment of Mrs. Hunter's claim is predicated upon the fact that she had failed to protect herself by way of insuring her goods. The committee, however, is constrained to point out that, even if the claimant had fully protected herself by carrying insurance, it is questionable whether the insurance carrier would have reimbursed the claimant for her losses, due to the fact that, under open policies of marine insurance, the warehouse-to-warehouse clause protects the goods while in due course of transportation, but that clause does not extend to protect goods during unusual delay, except upon special consent of the underwriter. Now, it is unquestioned that these goods were left to the ravages of the elements on the docks at Bilbao and Madrid for a period of 5 months. This is such an inordinately long period as would bring it within the exception of the marine clause of an unusual delay in the transportation of the goods and such a delay as would vitiate an insurance contract.

The committee also notes that the claimant went to great lengths to safeguard her goods, short of insuring them. She notified responsible authorities in the State Department and at the American Embassy in Madrid some 3 to 4 months before the shipment actually left Managua that these goods were being shipped; that they were valuable, and that the goods were uninsured. It is obvious that the claimant's shipment was inadequately protected, and that the time during which the shipment was in Bilbao was excessive. Furthermore, the claimant repeatedly requested Embassy officials in Madrid to move the shipment from the docks at Bilbao. The committee further observes that, although Mrs. Hunter suffered heavily from the loss of many of her valuable possessions, she makes no claim in this legislation for such valuable possessions which were damaged and lost, but limits her claim only to those personal and household effects which were necessary and incidental to her foreign duty tour at the American Embassy in Spain.

The committee notes that from the moment the claimant's effects were taken over by the Government in Managua, placed under bond and on Government bill of lading, the claimant, from that instant, had no authority over the shipment. To all intents and purposes it was no longer hers, the goods were consigned to the American Ambassador in Spain, not the claimant, and even if she had attempted to claim the goods, she could not do so until they had reached their final destination and authorized by the American Ambassador at Madrid. In view of this, it is apparent that the shipment was exclusively within the jurisdiction and control of the United States. Furthermore, due to the long delay in the shipment reaching the Embassy—the Embassy was certainly remiss in expediting the goods—the committee is constrained to observe that the Embassy officials failed to act diligently in behalf of this faithful career employee.

The committee, after a careful review of all the facts, is of the opinion that this is a meritorious claim. This claimant, although she did not insure her goods, certainly made every effort to see that the delivery of her goods was expedited, and she was lulled into a

false sense of security by American Embassy officials in Spain. It is undisputed that she has suffered a great loss, and while no legal liability on the part of the United States is perceived, by virtue of these unusual circumstances, the committee concludes that there is a moral obligation on the part of the Government to grant this woman some measure of restitution for the loss and hardship placed upon her as the result of the damage to and loss of her personal effects. The committee is constrained, therefore, to recommend that an award in the sum of $6,500 be granted to compensate her, in some degree, for the losses sustained. It is, therefore, recommended that the bill, S. 2008, be considered favorably.

The committee has allowed the 10 percent attorney fee provision, in view of information on file with the committee that there is an attorney involved in this claim and that said attorney has actually rendered substantial services in behalf of this claimant.

Attached hereto and made a part hereof are the attachments contained in House Report No. 51 on H. R. 2381 of the 83d Congress.

DEPARTMENT OF STATE,
Washington, July 5, 1950.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

MY DEAR MR. CELLER: Reference is made to your letter of June 5, 1950, which enclosed a copy of H. R. 8695, for the relief of Winifred A. Hunter, a former Foreign Service employee whose personal property was damaged during shipment from Managua, Nicaragua, to Madrid, Spain, during the period December 6, 1946–March 7, 1947.

As requested, there is enclosed a memorandum report summarizing Mrs. Hunter's claim as submitted to the Department. This memorandum also states that the Claim Board denied the claim on the ground that it considered Mrs. Hunter to have been negligent in failing to insure her shipment. This decision was made in accordance with the Board's established policy that no allowance may be made for property lost or damaged in shipment when such shipment could have been protected by insurance at a reasonable premium rate.

For the convenience of the committee, copies of Mrs. Hunter's claim and copies of correspondence in relation to it are also enclosed.

The Department has been informed by the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

JACK K. MCFALL,
Assistant Secretary
(For the Secretary of State).

THE FOREIGN SERVICE OF THE
UNITED STATES OF AMERICA,
Madrid, October 2, 1947.

Unclassified.
No. 4222.

The Chargé d'Affaires ad interim has the honor to refer to a memorandum from the Department, dated July 28, 1947, subject: Administration: Claim for damage of personal and household effects of Winifred A. Hunter, and to enclose herewith in compliance therewith an affidavit signed by Miss Hunter setting forth the circumstances of the damage to her effects and the estimated value at the time of loss of a substantial part of the effects which were destroyed.

Attached to the affidavit are certificates by five persons who saw and examined many of the effects.

It will be noted that Miss Hunter makes no claim for her collection of rare old books, early American historical documents, and maps, and that no claim likewise is made for any restoration possible to two valuable old paintings. It is felt that weight should be given to this fact in considering the claim she has submitted for the other articles destroyed.

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The Embassy would greatly appreciate early favorable action by the Department with respect to this claim. If exhibits would be of assistance in demonstrating the complete disintegration caused by water soak, a representative sample number of the effects can be furnished upon request.

Original and ozalid to the Department.

Enclosures: Certificate of damage by water soak to effects of Winifred A. Hunter, together with five affidavits.

CERTIFICATE OF DAMAGE BY WATER SOAK TO EFFECTS OF WINIFRED A. HUNTER, AMERICAN CLERK

I hereby certify that all of my personal effects and practically all of my household effects, having a total gross weight of 4,514 pounds, were entirely destroyed by rainwater soak after arrival in Spain on December 7, 1946 (refer to dispatch No. 4083 from the Embassy at Madrid, dated July 8, 1947), under the circumstances set forth below which are true and correct to the best of my knowledge and belief:

(*a*) The effects, consisting of two small wooden lift vans and two small boxes, all completely and thoroughly lined with waterproof roofing paper, reinforced with steel bands at all joinings, crisscrossed with steel wire, and cross-armed on the top and bottom of each case, were shipped on the steamship *Marques de Comillas* from New York on November 23, 1946, by the United States dispatch agent under travel order No. 7-0818 dated July 23, 1946, to Bilbao, Spain, for forwarding on to Madrid;

(*b*) Upon arrival in Bilbao on December 7, 1946, they were unloaded onto the customs docks there which have no protection from the weather other than a partial, entirely inadequate roof for the large amount of shipping arriving at that port and where they remained only partially sheltered by this roof until March 7, 1947 (3 months), at which time they were loaded onto a railway flatcar with no other protection than an inadequate canvas thrown over the top;

(*c*) That 8 days later, on March 15, 1947, they arrived in Madrid, were left standing for 5 days before unloading, were then placed in the railway customs enclosure or shed where they remained until April 28, 1947, under practically the same conditions as at Bilbao since shortage of protected storage facilities exists here;

(*d*) That on May 2, 1947, they were removed to Guggenbuhl's private warehouse in Madrid where on May 5, 1947, they were opened and found to be in a state of incredible ruin from rain-water soak which had caused rot, rust, and mold, and from coal dust and other foreign matter which had also penetrated into the effects;

(*e*) That all during the past winter and spring (December 1946–May 1947) and well into the summer month of June, heavy wind-driven rains, at times reaching torrential proportions causing streams and rivers to rise and flood, fell almost incessantly, thus breaking a 4-year drought in Spain;

(*f*) That for almost 5 months, therefore (December 7, 1946, to May 3, 1947) these effects were exposed to the hard wind-driven torrential rains on the docks at Bilbao, on open freight cars from Bilbao to Madrid, and in the customs enclosure at Madrid;

(*g*) That I was informed by the Embassy that the reason for the long delay in transporting the effects to Madrid was the severe shortage of freight cars in Spain as a result of the civil war and that lack of sufficient protected storage space for customs merchandise in Bilbao and Madrid was the cause for their exposure to the weather;

2. I further certify that I arrived in Bilbao on the steamship *Magallanes* on December 28, 1946, and immediately inquired at the United States consulate there as to my effects, explaining that they were very valuable, and was told they had arrived apparently in good condition and would be forwarded to Madrid when freight cars were available; that upon arrival in Madrid and reporting for duty on January 2, 1947, I immediately advised the administrative officer and the shipping section of the Embassy that everything of value I possessed was in these four cases, that some of the effects were very old and delicate and extremely valuable and that I was concerned for their protection in view of the extremely bad weather conditions and also that I was in very urgent need of my clothing and certain pharmaceutical and toilet things.

3. All during the 5 months that followed, I continued to report to the Embassy my concern for my effects, emphasizing each time their great age and value and that I needed my clothing.

4. I further certify that when the cases were opened I did not at first comprehend what had happened and automatically threw aside, to be later carried away by the laborers, article after article wet and ruined thinking that the next one removed from the case would be all right; that when it finally did penetrate that destruction and ruin were complete, I immediately requested the Embassy to send an officer to the warehouse to observe the effects being removed from the cases; that it apparently was not possible to do so until after long delay and, after at the insistence of the warehouse that the space was urgently needed, everything had been removed from the cases, unpacked, and many of the ruined things destroyed, that an officer accompanied by a Lloyd's inspector acting in a private capacity visited the warehouse and examined what remained (see exhibits Nos. 1 and 2).

That however, an authorized inspector from the warehouse company (Guggenbuhl) was present during the unpacking of these effects and carefully and thoroughly examined them as they came out of the cases and were unpacked (see exhibit No. 3).

5. I also certify that no trace of salt water ever having touched these cases or their contents was found; no least taste of salt in the saturated waterproof lining nor in any of the wet and molded articles; that on the other hand fresh water was wrung out of clothing and linens and stood about among the effects (see exhibit No. 2).

6. Insurance: I do further certify that no insurance was had on these effects for the following reasons:

(*a*) The premium on insurance because of the special clauses required to cover this particular type of effects because of their great age, delicacy, and value always has been far beyond what I have been able to pay and there seemed no point in insuring those effects of lesser value;

(*b*) There were no abnormal conditions known to exist in Spain at the time these effects were shipped, nor indicated in any information made available to me in the Department in Washington nor by the information provided me by the numerous insurance agents and shipping agents with whom I talked in both Washington and New York, including the United States dispatch agent in the latter city;

(*c*) The greatest normal risk under ordinary and normal shipping conditions is from breakage and robbery—from these my effects were extraordinarily well protected; in the first place the breakable items were few and each of them was individually padded and placed in an individual frame or stall built within the big cases to prevent moving; and, in the second, the effects which might have been subjected to robbery were so packed and placed in the boxes as to make robbery almost impossible—the books, maps, old documents, music, et cetera, the old paintings, and the old chest of linens had their own specially made containers having strong old-fashioned locks which my grandparents had used in carrying them;

(*d*) It has been my experience in countries where, as in Spain, clerks do not have free entry for their effects and consequently are obliged to put up bond for the amount of duty through a local bank that it is wise not to have any shipping documents (which include insurance papers) indicate the presence of unusually valuable effects nor any unusual values since the duties are ad valorem on effects such as mine were in the majority, and also for the reason that notation on said shipping documents of valuable effects of this nature invites robbery and increases the risk. Actually, the risk to effects, such as mine were, normally is greater with insurance than without it.

I also certify that it is the consensus of local insurance and shipping agents who have come to know about this shipment that insurance or lack of it does not enter into the case in view of the fact that ordinary, normal insurance would not have covered a loss of this kind brought about under what is termed "extremely unusual" circumstances, that no insurance company would pay such a claim unless loss under similar circumstances had been provided for under special covering clauses and then only upon a thorough investigation of the railway's inability to provide transportation for so small a shipment under 3 months and whether or not other means of transportation existed and were available.

7. Contents of boxes: I certify that my effects consisted in the main of the following:

(*a*) Practically all of my clothing and accessories—a 4- to 5-year supply of all kinds of clothing and materials;

(*b*) A 2- to 3-year supply of toilet goods and pharmaceutical supplies;

(*c*) A few items of fine old furniture which had come down in the family for many years and which had been treasured as hierlooms and kept in first-class con-

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dition and all of which were in excellent condition at time of packing and shipping;

(*d*) Many valuable hand-made linens, blankets, rugs, fur robes, paintings, and objects of art acquired during my many years in the Foreign Service and which represented a lifetime of savings;

(*e*) A collection of 200 rare old books (including a family Bible over 150 years old containing tin-type pictures of the family and family records), centuries-old maps, and early American historical documents, music, and literature; a collection which at the time of his death 30 years ago my grandfather valued at $25,000 and which upon my grandmother's death in 1923 came to me along with 2 extremely valuable old paintings and her own small fortune in old and precious hand-made Irish linens and laces made by her mother and grandmother in Ireland and Scotland and which she always described as being worth "thousands of dollars";

(*f*) One basket, one barrel, and one box of very fine porcelain, some of it very old Irish china and one Royal Copenhagen after-dinner coffee set including 12 cups and saucers and a Royal Albert tea set for 8;

(*g*) Many miscellaneous items of household effects such as a radio, bridge tables, hassocks, kitchen utensils, and electric articles, the majority of them almost new and some of which had never even been used, and all of which were in excellent condition at the time of packing and shipping;

(*h*) The remains of a Panama commissary food order and a small amount of varying basic foodstuffs on hand at the time of packing.

8. Effects lost and their estimated value: I hereby certify that only the more important and valuable of the effects damaged are set forth below, that, with the exception of those otherwise indicated, it has been impossible to save any of them through cleaning and restoring, and that they were packed with their detailed packing lists which together with letters, bills, and other personal papers which could have indicated their values were also destroyed;

I further certify that the estimated values given for these damaged and ruined effects are honest and fair to the best of my knowledge and understanding of prices of such items after having consulted numerous responsible persons who saw them:

Item	Estimated value at time of loss	Remarks
Collection of 200 rare old books; historical documents, maps, music, literature.	[1]	These priceless old things entirely destroyed.
Chest of beautiful old hand-made Irish linens and laces, outstanding among which were: a magnificent master Irish linen tablecloth for 20 people with matching napkins, hand-embroidered, and inserts of pheasant bird lace, same insert in napkins, and deep lace edging, made by my grandmother's mother and grandmother, a museum cloth.	[2]	Rotted, rusted, stained, eaten with chemicals; cleaners would not touch.
2 hand-made Irish lace bedspreads of famous wild rose and thrush pattern, made by my grandmother's mother and her mother.	$1,600	Entirely ruined. Cleaner would not touch.
1 very, very old blue and rose satin bed canopy, hand-made and lined and hand embroidered in colored birds and foliage, with matching curtains to floor.	[3] 1,200	Do.
1 exquisite hand-made lace wedding veil o the very old and beautiful clasped hand design made by my grandmother's mother and her mother.	1,000	
In addition to the foregoing the chest contained dozens of other exquisite, valuable hand-made laces and linens such as old altar cloths, old fashioned hand-made underthings, deep hand-made lace neck ruffs and wrist ruffs; lace mitts; table covers, widows' veils of deep hand-made black lace, chest lace covers, enormous lace and linen handkerchiefs; lace cushion covers.	1,000	
1 magnificent green, white, and gold Mandarin Chinese robe brough by grandfather from China over 50 years ago.	300	
2 Paisley shawls brought from Scotland by my grandmother	200	
1 large exquisite hand-embroidered and hand-made linen Madeira tablecloth and matching 12 napkins left to me by aunt, Mrs. John Kunderer, who died in 1945.	300	
Other linens (in packing trunk): 3 hand-woven, hand-made Swiss tablecloths with matching napkins purchased in Zurich in 1932.	90	
4 hand-made long silk aprons with inserts of hand-made lace, purchased in Munich in July 1939.	40	
1 hand-woven, hand-blocked linen tablecloth, Munich 1939	40	

[1] No idea; in 1917 valued at $25,000 (see (*e*) above).
[2] $1,500 to $2,000.
[3] Have seen some in Spain not nearly so fine as mine which are valued at 50,000 pesetas.

Item	Estimated value at time of loss	Remarks
1 hand-woven lace and linen tablecloth with red blocking thread on each lace block insert, Munich 1939, with 8 matching napkins.	$50	
3 hand-made lace and linen dressing table scarfs purchased Vienna 1932.	45	
10 fine hand-hemstitched and hand-embroidered sheets with cases (made in convents, Chile).	120	
6 fine linen, hand-hemstitched hand-embroidered sheets with matching cases made in Chilean convents.	120	Scarcely used. Some not used at all.
1 pale blue silk hand-embroidered sheet with Matching silk cases made in Quebec, Canada.	50	
In this trunk also were many fine linen handmade, hand-embroidered towels, dressing table sets, tray cloths, tea and luncheon sets, cocktail napkins, ordinary good handmade cotton sheets, 2 wool crotcheted bed jackets and matching crotched bed slippers; 2 suits of fine vicuna wool underwear (Argentina); 4 pairs hand-knitted fine woolen golf stockings, 1 hand-knitted dark green woolen sports suit with matching cap—many other miscellaneous items purchased and made in convents in South America—many of them never used, and all in excellent condition at time of packing, and now all entirely destroyed.	800	
In the same trunk were innumerable Paraguayan laces	100	
1 magnificent Pescuezo brown felt-lined vicuna robe from Bolivia	200	
1 pale blue velvet-lined white alpaca for full-sized bed	125	
1 black felt-lined black alpaca for library or music-room floor	100	
1 Guanaco, brown felt-lined, full size	75	
3 beautiful handmade woolen, brown white, and black-and-white mantas from south of Chile.	75	
4 medium-size handmade silk Danish rugs (Copenhagen)	300	
2 legitimate blue and rose Chinese rugs, 14 feet square	500	
1 vicuna wool single blanket for double bed, from Lima	50	
2 white, hand-carded, hand-woven, all-wool single blankets from south of Chile.	40	
2 matched black Chaopina rugs	60	
2 matched white Choapina rugs	70	
1 large black and red handmade wool rug from south of Chile	50	
1 full-sized fine steerhide rug from Argentina	70	
2 matching throw steerhide rugs	40	
1 lovely yellow satin eiderdown comfort for full-sized bed, purchased in Argentina in 1939 (imported from England).	75	
2 eiderdown pillows	40	
3 eiderdown cushions	20	
6 fine pure wool single blankets purchased in Buenos Aires in 1939, 1940, and 1941.	120	Excellent condition, 2 had not been used.
2 fine, pure wool white double blankets with yellow satin bindings purchased in Canada in 1943.	80	Never used.
2 chenille bedspreads, purchased 1945, El Paso, Tex	60	One never used, other was used only once.
Paintings and drawings: 8 beautiful paintings of Chilean Andes and country by famous Chilean painters Catalan and Vial.	400	These canvasses not prepared to withstand long water-soak.
2 new bridge tables and matching collapsible chairs, purchased El Paso, 1945.	70	
2 out of 4 original Cruickshank caricature drawings dated 1822	100	
FURNITURE AND MISCELLANEOUS		
1 fine old mahogany and leather living-room set (sofa and a chair)	400	Excellent condition, grandmother's.
1 fine old black walnut bed	175	Grandmother's.
1 Beauty Rest mattress for bed	25	
1 box spring for bed	25	
1 small lovely old Irish rocking chair upholstered in handmade tapestries.	100	
1 fine old Irish chest of drawers	175	
1 oak bookcase, Canada in 1943	50	
1 Crosley radio (table model), Canada in 1943	75	
2 leather-covered hassocks	10	
2 Pittsburgh plate-glass mirrors	40	
3 practically new packing trunks	90	
Miscellaneous kitchen utensils, including electric toaster, juicer, and coffee percolater.	100	
Pharmaceuticals and toilet goods (2- to 3-year supply vitamins, drug-store remedies all kinds; creams, powders, rouges, hand lotions, tooth powders, talcums, cotton, Kleenex, gauzes, soaps, etc.).	300	
4 yards white wool material for coat at $6 per yard, El Paso, 1945.	24	
1 bolt white silk jersey	25	
20 yards cotton materials for house dresses, play suits, etc., at $2 per yard, El Paso, 1945.	40	

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Item	Estimated value at time of loss	Remarks
FURNITURE AND MISCELLANEOUS—continued		
7 yards silk embroidery for dinner dress, at $5 per yard	$35	
1 short sealskin coat, Canada, 1943	300	Worn only a few times.
1 short silver muskrat coat	300	Used but excellent condition.
1 short brown caracul coat	100	
1 brown silk lined suede coat (Argentina)	125	Worn only once.
1 camel's hair Canadian coat, purchased 1944	150	Scarcely worn.
1 white ostrich cape, new	200	Worn only once.
7 pairs I. Miller shoes at average of $14 per pair	98	Some never worn.
1 pair alligator shoes (made in Nicaragua)	20	Never worn.
2 pairs riding boots, made in Argentina and El Paso	60	1 pair never worn.
2 Schenley winter hats	50	Not yet worn.
1 Schenley summer hat	15	Little worn.
1 chiffon dinner hat	15	Do.
1 petit point evening bag (purchased in Vienna)	50	Scarcely used.
2 alligator leather handbags, made in Nicaragua	50	Never used.
10 pairs kid gloves	50	Most of them never worn.
1 umbrella, blue silk, with alligator handle (London)	20	Scarcely used.
8 pairs wash cotton gloves	13	Some never worn.
6 pairs nylons	12	Never worn.
24 hand made linen, hand embroidered and lace handkerchiefs	14	Many never used as yet.
6 silk neck scarfs	12	Some never used yet.
6 woolen neck scarfs	18	Do.
6 linen blouses, hand-made and hand-embroidered, lace-trimmed	90	Nicaragua, some not worn.
15 summer cotton and linen dresses from Managua (El Paso, 1945).	300	Some never worn.
2 light weight dark coats	70	
2 silk jersey dressing robes	30	
2-year supply of cotton, silk, satin, and jersey underthings and night things.	150	A great deal of it never even worn.
1 winter black crepe dress	60	Was transferred to the Tropics before I had much time to wear these winter things. Were almost entirely new and unused.
1 summer black crepe dress	40	
1 heavy brown crepe dress	48	
1 flowered silk jersey dress	35	
2 winter evening gowns	110	
2 summer silk evening gowns	85	
2 cotton dinner dresses	40	
1 Scotch woolen golf suit purchased in Canada in 1944	50	
1 heavy gray woolen bathrobe (Canada)	25	
3 bath sets	17	
4 large lampshades	20	Two were hand decorated on parchment.
1 kerosene, 5 burner kitchen stove ($65 in El Paso, December 1945 and shipped to Managua). (A 2-year supply of wicks packed with stove also ruined.)	50	Excellent condition when packed—now rusted beyond saving.
Canned goods, flour, tea, coffee, sugar	100	
Miscellaneous household supplies such as bath towels, shower curtains, cotton, and silk drapes, light-weight summer quilts, cotton blankets, kitchen linens, window curtains, rag rugs.	150	Many of these things had not been used as yet and were entirely new.
Grand total, exclusive of collection of old books, etc	16,106	

9. Two very old and beautiful paintings also were badly damaged but the Royal Academy of Art states that it may be possible to restore them since they are by an old master and contemporary artist who prepared their canvases for the ages.

10. I further certify that there were countless other things of the type set forth herein, too numerous to make of record here which were also destroyed by the water—things in the way of household effects, clothing, objects of art, books, pictures, et cetera, as well as personal papers, acquired in the course of over 20 years in the Foreign Service. I have no way of estimating their value.

I also certify that, incredible though it may seem, all of the items mentioned were entirely destroyed by the water and now have no value—in the main they have been burned, especially the remains of the old family things which I could not see desecrated by strange hands.

11. I further declare and certify in conclusion that in herewith presenting claim for the estimated partial value of my effects as set forth herein ($16,106), I do not do so with any feeling of rancor, but in the belief that in fairness, since the Service has taken from me everything which I held dear and which would have provided a degree of financial security in later years, the Department will wish to make recompense in some fashion.

WINIFRED A. HUNTER,
American Clerk.

90006°—57 S. Rept., 84-2, vol. 6——84

ATTACHED EXHIBITS

1. Original certificate by Clyde W. Snider, third secretary of Embassy, Madrid.
2. Original certificate by Peter B. Larsen of the firm of MacAndrews & Co., Ltd.—Lloyd's agents.
3. Certificate by F. C. Walter, of the warehouse company of Gustavo Guggenbuhl.
4. Certificate by Don Alberto Puig Arosemena, present Ecuadorian Ambassador to Colombia who at the time of arrival and unpacking of my effects was Ecuadorian Chargé d'Affaires in Madrid.
5. Copy of letter from Bilbao branch of the local firm of MacAndrews & Co., Ltd., with respect to damage and robbery to shipments at port of Bilbao.

EXHIBIT No. 1

CERTIFICATE

I, Clyde W. Snider, do hereby certify that I observed some of the damage which occurred to the personal and household effects of Winifred A. Hunter, an American clerk at Madrid. I saw the major part of those effects which she had kept in the various places where she had taken them after uncrating.

In general, the goods appeared to have been extensively damaged by water soaking. Some of the particular damage which I noted was as follows:

All of her books had been water-soaked, with the consequent injury to the covers and pages.

Several pieces of furniture had become warped and the upholstery was spotted and stained.

Several picture frames had been warped and the paint had flaked off. The paintings themselves had water stains.

Approximately a dozen pairs of shoes had stains, mildew, rust, and cracks caused by water and all I should say were completely ruined.

Many dresses, blankets, and bolts of cloth had stains, mildew, and rust spots which indicated prolonged moisture.

The trunks in which the articles were packed showed evidence of water soaking, the metal parts were severely rusted and the leather and fabric coverings and materials had wrinkled, peeled, and partially disintegrated.

I am not able to appraise the value of the articles damaged, but it would appear to be large, since most of Miss Hunter's shipment was irreparably damaged.

CLYDE W. SNIDER,
Third Secretary of Embassy.

AMERICAN EMBASSY, MADRID, *August 29, 1947.*

EXHIBIT No. 2

CERTIFICATE OF DAMAGE

At the request of the American Embassy, Madrid I, Peter B. Larsen, of MacAndrews & Co., Ltd., agents in this city of Lloyd's and correspondents of the Board of Underwriters of New York, have examined various articles of the personal and household effects of Miss Winifred Hunter, of the above-mentioned Embassy, which formed part of a shipment from New York to Bilbao, thence Madrid. I certify the following as an independent observer.

1. That I examined one of the four cases in which the said effects arrived at Madrid. This case, marked "American Ambassador, Madrid Spain, No. 3220," showed signs of having been in contact with water. All the steel bands strengthening the case were severely rusted and the waterproof paper had clearly been saturated. The corners and joints on the inside were stained in such a manner that water must clearly have entered the case. Although no chemical test was carried out it is my opinion that contact had been with fresh water.

2. That of various items stored in the warehouse of Messrs. Gustavo Guggenbuhl, Madrid, the following were damaged as noted hereunder:

One oak chest, widespread deposit of mildew in its drawers. Varnish on the top had been worn off in various parts and the joints in the drawers had become loosened due to warping. The lock was severely rusted.

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One black cabin trunk, all locks were heavily rusted and various parts of the surface of the trunk were stained and warped.

Two white-and-pink blankets and four rugs were stained by rusty water.

One brown cabin trunk had clearly been soaked and widespread mildew remained. This trunk had partially disintegrated and cannot be considered serviceable.

Three photograph frames, saturated, stained, and warped beyond restoration.

One metal table lamp, severely rusted.

Two pairs leather-top boots, covered with mildew and leather warped.

Five cushioned and upholstered seats for armchairs and/or settees, stained with a deposit of mildew in various parts. (Nine further similar seats were not unpacked and could not be inspected. They are alleged to have been in the same case.)

One alleged Queen Anne chair, upholstery had been soaked and was torn in various parts. The wooden frame of its back was broken in two places.

One leather-covered wooden armchair, showed signs of staining and the leather in parts had come away and shrunk.

One refectory table, leg joints were loose and joints showed traces of mildew.

One rocking chair, upholstery shrunk and ruined beyond repair.

3. That I examined various items in the rooms of Miss Hunter at the Palace Hotel, Madrid, of which the following were damaged as noted hereunder:

One bridge table (metal), one edge severely rusted. Leg fixtures and sliding devices also rusted. The top of the table was stained and warped.

One green silk flowered Chinese robe, rust-stained through to lining and in my opinion cannot be restored.

Seven pairs new shoes, had clearly been cleaned up but still showed slight signs of staining. They are stated to have shrunk so that they cannot be worn.

Two Cruickshank caricatures—these drawings were stained under the glass and frames. Varnish of the frames had come off in some parts.

One metal and hand-painted tray, warped and rusted.

One small leather etui containing three pairs scissors—case completely disintegrated and scissors severely rusted.

4. That the following books were stained, warped, and affected by mildew to varying degrees. All would require rebinding:

Survey of American Foreign Relations, 1928
Martin Fierro (an old pigskin-bound volume)
Gran Temperatur, Pablo de Rokha
You Have Seen Their Faces
Green Mansions
The Week-End Book
Extract From Adam's Diary, Mark Twain
12 Million Black Voices
More Poems, A. E. Housman
Solomon, My Son
Sins of New York
David Copperfield
One Spanish/English dictionary
Two Spanish grammars

5. That I was shown the following articles at the American Embassy which were stated to have been dry-cleaned but which still showed traces of staining by rusty water and revealed a deposit of what appeared to be soot or coal dust. These stains were apparently ineradicable:

One length of white silk dress material
One wadding bedcover
One length of blue-flowered dress material
One white linen bedcover
Three bath mats
One length white silk material (about 3 meters)
One hand-sewn woolen white blanket
One white chenille bedcover
One fawn camelhair blanket
One pillow

It is my opinion that all the items mentioned in the foregoing paragraphs have suffered the damage as specified due to lengthy and excessive exposure to fresh water which was contaminated by impurities such as rust and coal dust. In view of the fact that the shipment arrived at Madrid in a wet state, this excessive exposure must be presumed to have occurred during warehousing in Bilbao.

PETER B. LARSEN.

MADRID, *June 25, 1947.*

EXHIBIT No. 3

Casa Gustavo Guggenbuhl. Proprietario, F. C. Walter. Transportes internacionales, aduanas, seguros, embalajes, mudanzas internacionales. Madrid, Adva Jose Antonio 27

CERTIFICATE

We, Casa Gustavo Guggenbuhl, shipping agents in Madrid, having been requested by the American Embassy in Spain to take care of the clearance and delivery of a shipment of different goods, arrived at Bilbao per steamship *Marques de Comillas* on December 7, 1946, and consigned to the American Ambassador, Madrid, solemnly declare that out of a shipment of four cases marked with the symbol "3220," the following personal and household effects contained in two cases having a gross weight of 1.837 kilos, were found upon unpacking to be water-soaked by rainwater and in the main entirely ruined as a result of this damage:

Many books, maps, and documents, several paintings, two mirrors, two bridge tables and chairs, one oak bookcase, one mahogany davenport and chair, cushions and springs for chair and davenport, one typewriter, one radio, three trunks with all of contents, one chest with all contents, one bed and mattress, many toilet and pharmaceutical articles, foodstuffs, tea, sugar, salt, coffee, et cetera, much clothing, many pairs of shoes and boots, hats, numerous rugs and fur robes, much bed linen and table linen, two hassocks, photographs, one rocking chair, much sheet music, one small banjo.

We further certify that the value of these effects we do not know but from the effect their destruction had upon their owner, especially with respect to the books, maps, paintings, and linens, it must be very considerable.

Dated in Madrid this 20th day of June 1947.

CASA GUSTAVO GUGGENBUHL.
F. C. WALTER.

EXHIBIT No. 4

LEGACION DEL ECUADOR MADRID,
August 10, 1947.

To Whom It May Concern:

This is to certify that since January when we had the pleasure of meeting Mrs. Winifred Hunter, both my wife and myself often heard here speak about her household and personal effects which had arrived in Bilbao the month before in December 1946 but were delayed in that port. She needed her winter clothing but said the Embassy had told her that there were no freight cars on which to bring her things to Madrid yet but that they were safe in the custom warehouse in Bilbao. We know the conditions at Bilbao and as she often spoke to us of some very old books and paintings and linens willed to her by her grandparents and which were in the effects and which she wanted very much to show us, my wife and I and other friends did our best to impress upon her that the very bad weather conditions could harm all of these things and that she should endeavor one way or another to have the Embassy arrange for their transportation to Madrid, but she always replied the same, that the Embassy said there were no freight cars and that her things were safe in the custom warehouse in Bilbao.

When months elapsed and they did not arrive, however, Mrs Hunter at last became very much worried and concerned for their protection, saying that her grandparents had told her that the old things represented a small fortune and that she had no insurance on them. Seemed embarrassed when we asked her why and she said that she did not have the money at the time they were shipped to pay the high premium asked by them by insurance companies, therefore she was obliged to ship them at her own risk but that the risk by sea was very little now that the war was over. We explained about the damage that could come to them at Bilbao unless they were well protected and again urged her to have the Embassy try again to get them to Madrid. She replied always the same.

Some time in the last days of May she came in to the hotel lounge looking very tired and ill and asked my wife and me if we would like to come to her room and see some of the things which she had been unpacking. We were very much surprised and could not believe what we saw; paintings, books, linens, blankets, robes, many pairs of shoes, boots, hats, pocketbooks, bridge tables, chairs, talcum powder, and many other things and all of them in a state of entire disaster and ruin by water. Some of them were now wet and others were with mildew and

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rust and rot and a kind of black infiltration. My wife and I wish to say that we have never seen more complete disaster and the loss in money must have been very large for the clothing alone and there were old books and paintings which were just wet dirty canvases, and the linens and two beautiful robes were rusted and rotted. Some of the things Mrs. Hunter sent to the hotel cleaning but they were returned to her by the cleaners who would not touch them because of the rot and rust. We know that she gave many pairs of shoes and other things to the hotel staff.

We did not go to the warehouse with Mrs. Hunter to see the other of her things but I make this statement in accordance with the truth of what my wife and I both saw and out of high regard for Mrs. Hunter whom we both desire to help in any way possible for this very severe cultural and financial distress which she has suffered through delay in the delivery of her effects to Madrid.

ALBERTO PUIG AROSEMENA,
Ecuadorean Ambassador.

EXHIBIT No. 5

From: MacAndrews & Co., Ltd., Bilbao.
To: Messrs. MacAndrews & Co., Ltd., Madrid, June 23, 1947.
Damages to and robbery of goods at Bilbao

We take pleasure in answering herewith your kind letter of June 21. Goods arriving at Spanish ports from abroad are classified by the customs office into wharf goods and customs house goods; the customs administrator, with the definitive unloading permit before him, classifies as wharf goods those items which because of their heavy weight are deposited on the docks and as customs house goods those which because of their light weight or great value are deposited in the customs warehouses.

Generally Embassy goods are classified as customs house and are taken to customs warehouses, which are completely closed and located on the ground floor of the customs building, at the latest on the day after unloading and accompanied by internal revenue guards; in our opinion these warehouses have perfect security arrangements from the point of view of robberies since they are guarded by customs personnel, as well as to physical care.

Embassy goods in general are of great value and are desired by the workers who handle them, especially where food products are concerned, and the robbery of foodstuffs is unfortunately frequent in Bilbao and, we suppose, in all Spanish ports nowadays.

Wharf goods are, as we say, deposited on the docks, and with reference to the port of Bilbao, are in many cases, due to the great congestion because of lack of permits, documentation, freight cars, et cetera, discharged outside the sheds in the open air, being covered by tarpaulins and placed on gratings to avoid damage by rainwater, and under custody of guards of the Bureau of Port Works.

Damages, robbery of part of the contents, and moistening cannot be chargeable to the shipowner, customs authorities, or customs agents, since all of us, within the possibilities of our port, try to arrange the goods in the best possible form, responsibility for the above falling solely on the companies insuring the goods, excepting in those cases in which items on the manifest are missing, for which the shipowner is responsible, and in which items entering the customs warehouses are missing, for which the customs house is responsible.

We take the liberty of suggesting to you that it would be very useful in the future if the embassies would, prior to the arrival of vessels, advise their customs agent of the shipment they expect to receive, ordering the agent to be present on the docks during the unloading in order to exercise strict vigilance and attempt to arrange cases in the best possible manner to avoid damages by rain, et cetera, and robbery.

Any amplification which you may desire of the contents of this letter will be furnished with pleasure by

Your most attentive and faithful servants,

MACANDREWS & CO., LTD.,
Bilbao Branch.

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Calendar No. 1839

84TH CONGRESS
2d Session

SENATE

REPORT
No. 1815

WILLIAM F. FRIEDMAN

APRIL 23 (legislative day, APRIL 9), 1956.—Ordered to be printed

Mr. O'MAHONEY, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2068]

The Committee on the Judiciary, to which was referred the bill (H. R. 2068) for the relief of William F. Friedman, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay to William F. Friedman the sum of $100,000 in full settlement for all rights in respect of his inventions in connection with military, naval, and air communications facilities, which are now, or at any time have been placed in secrecy status by the Department of the Army or the Department of Defense, including but not limited to all rights with respect to his inventions covered by patent No. 2,395,863, and by patent application serial Nos. 682,096, 107,244, 70,412, 443,320, 478,193, and 549,086 and with respect to all inventions for which patent applications have been withheld by the Department of the Army or the Department of Defense in order to preserve secrecy.

STATEMENT

This legislation was the subject of hearings before a subcommittee of the Committee on the Judiciary on February 16, 1956, and the testimony presented, in the opinion of the committee, serves to support the merits of this claim. The general history of the legislation is set forth in detail in two reports of the Department of the Army dated, respectively, July 6, 1953, and March 10, 1954. There have

also been submitted complete statements by the attorneys for the claimant, Fischer, Willis & Panzer, of Washington, D. C.

The facts indicate that Mr. Friedman was instrumental in the evolvement of nine inventions which were of vital concern to the United States Government and to the defense thereof. The testimony indicates that these inventions were of such a highly secret nature that they were held in secrecy by the Government. Seven of the nine inventions are still in that status. The result has been that the claimant, Mr. Friedman, has not received compensation or remuneration for his discoveries, which were of such benefit to the Government in the war years.

Considerable study has been given to this matter, as is disclosed by the two reports of the Department of the Army. In their first report, of July 6, 1953, the Army suggests that an award in the sum of $25,000 would be a fair and reasonable sum to be awarded. However, after a further consideration of all of the facts surrounding this claim, in its report of March 10, 1954, the Department of the Army modifies its previous report to the extent that it feels that the sum requested in the bill is, in actuality, a more proper and reasonable amount than theretofore recommended.

The committee, after study of the record, concurs in the conclusions reached by the House of Representatives and recommends this legislation to the favorable consideration of the Senate.

Attached hereto and made a part hereof are the two reports of the Department of the Army, heretofore referred to, together with other informational data and precedents supporting this legislation.

The committee notes that Mr. Fischer, of the law firm of Fischer, Willis & Panzer, has been representing Mr. Friedman throughout the prosecution of this claim and it is, therefore, recommended that the conventional provision allowing an attorney fee not to exceed 10 percent thereof be retained in the bill.

DEPARTMENT OF THE ARMY,
Washington, D. C., July 6, 1953.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives,

DEAR MR. REED: Reference is made to your letter of January 30, 1953, enclosing copies of H. R. 1152, 83d Congress, 1st session, a bill for the relief of William F Friedman. It is noted that your letter is a followup to request of October 18, 1951, for a report on H. R. 5728, the corresponding bill for the relief of Mr. Friedman introduced in the 82d Congress. Because of the complicated factual situation and certain security aspects of the subject matter of the Friedman inventions involved in the bill, an interim reply by the Department of the Army was made on December 26, 1951, advising that some delay in preparing the Department's report was unavoidable.

The present bill, H. R. 1152, is in all respects similar to H. R. 5728 and corresponding S. 2283, 82d Congress, 1st session, and this report is much the same as that contemplated by the Department in answer to the requests from the congressional committees considering the earlier bills.

H. R. 1152 provides as follows:

"That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, to William F. Friedman, out of any money in the Treasury not otherwise appropriated, the sum of $100,000, in full settlement for all rights, in respect of his inventions in connection with military, naval, and air communications facilities, which are now or at any time have been placed in secrecy status by the War Department or the Department of Defense, including but not limited to all rights with respect to his inventions covered by Patent Number 2,395,863, and by

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patent application serials 682,096, 107,244, 70,412, 443,320, 478,193, and 549,086 and with respect to all inventions for which patent applications have been withheld by the War Department or Department of Defense in order to preserve secrecy: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with such claims and rights."

The record indicates that Mr. Friedman served in World War I as a first lieutenant in the Military Intelligence Division, and subsequently in a Reserve status until his retirement for physical disability in 1941. On December 31, 1921, Mr. Friedman accepted appointment as cryptanalyst in the office of the Chief Signal Officer, United States Army, at a basic salary of $4,500. Except for a few months' military furlough in 1941, Mr. Friedman served continuously in the Signal Office until January 21, 1947, when he was assigned to the Army Security Agency as Director of Communications Research. He is presently employed as Special Assistant to the Director of, and as research consultant in, the National Security Agency (formerly Armed Forces Security Agency). During this period, Mr. Friedman's compensation periodically increased through promotion and other authorization to its present $11,800.

The application resulting in patent No. 2,395,863 and the patent applications referred to in the bill (including application serial No. 478,193, now patent No. 2,552,548 issued May 15, 1951) were filed in the period from July 25, 1933, through November 8, 1944. One application was filed in 1933, 2 in 1936, and 1 each in 1939, 1942, 1943, and 1944. Two other inventions were made during this period but patent applications were never filed therefor, because of security considerations. All the inventions relate to cryptographic devices or machines. Procurement by the United States of devices constructed in accordance with the principles of Mr. Friedman's inventions has approximated $10 million, most of which occurred during the active phase of World War II, and has involved the use of substantially all his inventions.

Under the circumstances of his employment it appears clear that the Government has at least a nonexclusive license in Mr. Friedman's inventions, Mr. Friedman retaining the right to otherwise exploit them. Because of security considerations, however, Mr. Friedman has been prevented from attempting to derive any gain from his inventions commercially or from foreign governments. In the case of the two applications which have matured into patents, Mr. Friedman was so restricted until the issuance of the patents or just prior thereto. Insofar as the other 5 applications and 2 inventions are concerned, Mr. Friedman is still prohibited from attempting to make any profit therefrom. Such prohibition will remain in effect as to each application until the Department determines that security considerations no longer proscribe their publication.

Maj. Gen. Ralph J. Canine, then Director, Armed Forces Security Agency, in response to a request for information and the views of the Agency to assist in responding to the earlier request of October 18, 1951, from your committee, advised in communication of February 29, 1952:

* * * * * * *

"2 (*a*). Whether Mr. Friedman has accomplished anything which 'warrants' compensation beyond what he has already received in the form of salary and commendations is impossible to say. It is this question that the Congress must determine. It can, however, be said that his inventions over a period of years have been of very substantial value to this Government and its allies. It can also be said that this situation differs from the Garand case in its secrecy aspects; classification was not involved in the Garand matter.

* * * * * * *

"2(*c*). Estimation of the commercial possibilities of the Friedman inventions is difficult. As far as is known here, relatively little commercial use is made of privacy systems in this country except in banks and other financial organizations, and their use of business codes is commonly dictated as much by economy considerations as security; nevertheless, it cannot be said that a market for high-grade ciphering machines could not have been developed. Moreover, in the absence of security considerations, it is likely that a substantial market for the inventions could have been developed among foreign governments. Future commercialization is subject to the same difficulties of evaluation.

* * * * * * *

"3. Referring generally to compensation for Mr. Friedman on account of his inventions, I feel very strongly that it should not be in the nature of a reward, notwithstanding the virtues of his inventions and their unquestioned value to the United States and its allies over a period of many years. It does appear to me on the other hand, that, if the inventor has been denied an opportunity to realize commercial benefit only because his inventions were in a sensitive field and, more significantly, only because they were important in that field, then his treatment, relative to the treatment of other Government inventors, has not been equitable.

* * * * * * *

"8. Based on the facts before me, and in the absence of a well-defined Government policy, I feel that I should not oppose Mr. Friedman's efforts to obtain legislative relief. This is especially true since I am convinced that in the long run an organization such as the Armed Forces Security Agency will suffer if, relative to other organizations, it must offer less not only of public recognition but also of material gain to men of outstanding intelligence, ingenuity, and skill."

By communication of March 6, 1953, General Canine, now Director, National Security Agency (successor to Armed Forces Security Agency), advises that his views in this matter remain as stated in his previous letter.

The record also indicates that Mr. Friedman has been recognized for his public service and is regarded as an eminent authority in his field. In this connection, he received an award of a Medal for Merit, from President Truman, for service during the period of December 8, 1939, to September 2, 1945, and an award of Commendation for Exceptional Civilian Service, from Secretary Stimson, during his employment with the Signal Corps.

It is believed that there is no law which provides for Mr. Friedman's redress. He has no legal remedy under title 35, United States Code, sections 181–188 (codifying Public Law 256, 82d Cong., the Invention Secrecy Act of 1951), that law excluding from its benefits anyone who was a full-time Government employee when he made the invention in question. Section 10 of Public Law 256, 82d Congress, repealed Public Law 700, 76th Congress (35 U. S. C., 1946 ed., 42), but preserved any rights then existing under the latter act. However, this appears to afford no legal remedy for Mr. Friedman, since Public Law 700, 76th Congress, required a claimant to have a patent issued upon an application which was in secrecy and tendered to the Government under the provisions of that statute. Likewise, title 28, United States Code, section 1498, relating to recovery for patent infringement by the Government, fails to provide Mr. Friedman any legal remedy, since the Government has at least a royalty-free license to use the Friedman inventions.

The Department is of the view that Mr. Friedman should be compensated for the loss of his property right in the inventions, a right which would permit him exclusively to make, use, and sell the subject matter of his inventions, or to reap profit from the licensing of others to practice the inventions. Except for the withholding of patents of his inventions in the interest of the security of the United States, Mr. Friedman could have sought financial gain therefrom. Where the fruit of an inventor's labor has been of substantial benefit to his Government and his right to seek reward for his efforts is impaired for so great a period of time for security reasons, it is equitable that he be compensated for his loss. This view is in accord with the policy of the Department of encouraging technological advancement. To deny an inventor the right to seek gain from his inventions merely because they are vital to our national defense and the security of the Government, while permitting such pursuit by inventors in other fields where security interests are not paramount, would be discriminatory and would discourage advancement in matters vital to our national defense.

As pointed out in paragraph 2 (c) of General Canine's letter of February 29, 1952, it is impossible to evaluate Mr. Friedman's loss. In the absence of more definite information than is at hand relative thereto, the Deparment does not favor an award of the magnitude set out in H. R. 1152. While this is a matter for the Congress to determine, the Department feels that an award of $25,000 should be adequate compensation for Mr. Friedman based on the facts at hand.

This report has been coordinated among the departments and boards in the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that while there is no objection to the submission of this report, it is believed that there is a serious question as to the desirability of making the proposed award in view of the fact that it is inconsistent

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with general administrative and statutory policies relating to inventions made by Federal employees in the course of their employment with the use of Government materials and with the aid of other employees.

Sincerely,

ROBERT T. STEVENS,
Secretary of the Army.

DEPARTMENT OF THE ARMY,
Washington, D. C., March 10, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. REED: Reference is made to the Department of the Army report of July 6, 1953, on H. R. 1152, 83d Congress, 1st session, a bill for the relief of William F. Friedman, in response to the request contained in your letter of January 30, 1953.

As was pointed out in the above-mentioned report, in compliance with a request for information and the views of the Armed Forces Security Agency to assist in responding to the earlier request of October 18, 1951, from your committee for a report on H. R. 5728, the corresponding bill for the relief of Mr. Friedman introduced in the 82d Congress, Maj. Gen. (now Lt. Gen.) Ralph J. Canine, Director of said Agency, replied in a communication dated February 29, 1952, wherein he expressed his views with respect to H. R. 5728. The more important portions of General Canine's reply are quoted in the Department of the Army report of July 6, 1953, on H. R. 1152, 83d Congress. Also as stated in said report, by communication dated March 6, 1953, in response to a request for his views with respect to H. R. 1152, 83d Congress, General Canine, who was then and still is Director, National Security Agency (successor to Armed Forces Security Agency) advised that his views in the matter remained as stated in his letter of February 29, 1952, above mentioned.

The third from the last paragraph of the Department of the Army report of July 6, 1953, on H. R. 1152, 83d Congress, refers to paragraph 2 (*c*) of General Canine's letter of February 29, 1952, relating to evaluation of Mr. Friedman's loss, which paragraph is quoted earlier in the report, and then states "In the absence of more definite information than is at hand relative thereto, the Department does not favor an award of the magnitude set out in H. R. 1152. While this is a matter for the Congress to determine, the Department feels that an award of $25,000 should be adequate compensation for Mr. Friedman based on the facts at hand."

In view of Mr. Friedman's employment by the National Security Agency and its predecessor, the Armed Forces Security Agency, and the familiarity of personnel of said agencies with the Friedman inventions covered by H. R. 5728, 82d Congress, and H. R. 1152, 83d Congress, the history and value of the inventions and the actual and potential use thereof (both governmental and commercial), General Canine, as Director of said Agencies, was consulted as manifestly the best qualified and most reliable governmental source for information and comments with respect to the merits of the mentioned bills (including evaluation of any loss suffered by Mr. Friedman), in order to assist in the preparation of the reports on these bills requested by your committee.

There has recently come to the attention of the Department of the Army certain classified military information as a result of which the question arose as to whether, in view of such information, any change should be made with respect to the statement in the Department's report of July 6, 1953, on H. R. 1152, 83d Congress, that the Department feels that an award of $25,000 should be adequate compensation for Mr. Friedman based on the facts at hand. To assist in resolving this question and to aid in the preparation of any further report which it might be concluded to make to you modifying the earlier report of the Department, further comments from General Canine were requested in this question.

In response to the above request, General Canine by communication dated November 17, 1953, stated in substance that, with respect to the question of whether the amount of $25,000 mentioned in the Department of the Army report of July 6, 1953, would be adequate, he had noted that in recommending that amount in said report it was stated that the amount was based "on the facts at hand" and that the full amount of the award proposed in H. R. 1152 was not favored "in the absence of more definite information" relative to the loss sustained by Mr. Friedman as a result of the secrecy limitations which have prevented

exploitation of the commercial possibilities of his inventions; also that the Department of the Army report indicated that reliance was being placed upon his (General Canine's) opinion of the difficulties in evaluating the loss.

Continuing, General Canine said that, while it is certainly difficult to estimate Mr. Friedman's loss, and precise evaluation would be impossible, there are several considerations which permit a reliable appraisal of the reasonableness of the award proposed in H. R. 1152; that the machines based on Mr. Friedman's inventions are outstanding in their field, and to the extent that there is or has been a demand for machines of these types, the relative excellence of the Friedman machines would give them an important competitive advantage; and that there was, during the recent war and still is unquestionably a large market among foreign governments for devices of the type in question; that he (General Canine) is not in a position to gage the need of business firms for devices of the type referred to, but even a very limited demand would yield substantial royalties because of the high unit cost of the machines; and that therefore, it is entirely reasonable to suppose that the potential market for Mr. Friedman's inventions has been such that the royaltics to the inventor could have been substantially in excess of $100,000, although the difficulties besetting the inventor in realizing the potential profits in his inventions are, of course, substantial.

Continuing further, General Canine commented that any payment to Mr. Friedman would have to be based, not on a legal claim against the United States, but on considerations of equity, which as was indicated in the Department of the Army report of July 6, 1953, is a matter for Congress to determine. General Canine then stated his belief that it would be appropriate to advise Congress that classified information in the possession of the Department of Defense indicates that the potential loss sustained by Mr Friedman as a result of his being prevented from exploiting the commercial possi ilities of his inventions is considerably in excess of the amount of the award proposed in H. R. 1152.

In view of the classified military information referred to above, the abovementioned comments of General Canine, more particularly those pertaining to evaluation of the indicated potential loss sustained by Mr. Friedman, and the facts and comments contained in the Department of the Army report of July 6, 1953, the Department desires to modify that report to state that it now feels that an award of the full amount sought by H. R. 1152, 83d Congress, would not constitute more than adequate compensation for Mr. Friedman's loss.

This report has been coordinated within the Department of Defense in accordance with the procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, while there is no objection to the submission of this report, it is believed that there is a serious question as to the desirability of making the proposed award in view of the fact that it is inconsistent with general administrative and statutory policies relating to inventions (including specifically those kept in secrecy) made by Federal employees in the course of their employment with the use of Government materials and with the aid of other employees. It would also appear to be inconsistent with the general policies embodied in section 702 of the Classification Act of 1949 to make the proposed award to the beneficiary on the basis of outstanding contribution or achievement in the Government service.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

Memorandum for: Mr W. F. Friedman, War Plans and Training Division.

You are hereby assigned to develop improvement in arts of value to the Chief Signal Officer, during the period of your assignment to duty in the Office of the Chief Signal Officer.

It is expected that this work may result in the discovery of patentable features, and your assignment to this work is for the particular purpose of vesting in the United States all right, title, and interest to any invention that you may make while engaged in the work assigned, if in the opinion of the Chief Signal Officer the public interest demands that the invention be owned and controlled by the War Department.

Acceptance of assignment to this work will constitute an agreement on your part to execute the papers required for complete assignment of any such invention to the United States in case the Chief Signal Officer decides that the invention should remain secret, or to execute the papers necessary for making application for patent and the assignment of the patent to the United States if secrecy is not necessary or is necessary only for a limited time. In the case of an invention

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which the Chief Signal Officer decides should remain secret acceptance of this assignment also constitutes an agreement on your part that you will not disclose the invention to unauthorized persons until such time as you are informed in writing by the Chief Signal Officer, or by his order, that the need for secrecy has ceased.

The assignment of the invention to the United States must be drafted in form to comply with requirements of law relating to patent applications coming under this category; but such assignment or instrument of transfer may in a proper case include suitable reservations to enable you to retain or repossess your commercial rights, in whole or in part. if and when the need for secrecy ceases to exist.

This notice of assignment to develop improvements in arts of value to the Signal Corps shall not be construed as divesting you of ownership of any invention made by you while engaged on this work, other than those which in the opinion of the Chief Signal Officer should be owned and controlled by the War Department to safeguard the public interest, except that the United States shall be entitled to a nonexclusive license to any and all inventions made by you in the course of the work assigned in the same way as if this special assignment had not been made.

By order of the Chief Signal Officer:

(Signed) DAWSON OLMSTEAD,
Executive Officer.

[First endorsement]

WAR DEPARTMENT,
OCSIGO,
Washington, D. C., April 25, 1936.

To: The Chief Signal Officer.

1. I hereby accept assignment to work under the conditions set forth in basic communication.

(Signed) WILLIAM F. FRIEDMAN.

A true copy.

MEMORANDUM CONCERNING A BILL FOR THE RELIEF OF WILLIAM F. FRIEDMAN

(Submitted at request of Maj. James R. Mills, JAGC, Chief, Patents Division, by Fischer, Willis & Panzer, Dupont Circle Building, Washington 6, D. C. August 21, 1950.)

To: Maj. James R. Mills, JAGC, Chief, Patents Division.
Re: Bill for the Relief of William F. Friedman.

INTRODUCTION

At a conference held on June 8, 1950, I submitted to you orally our proposal to have submitted to the Congress a bill for the relief of Mr. William F. Friedman, now Chief of the Technical Division, Armed Forces Security Agency, Department of Defense. This proposal was made to you pursuant to the authorization and direction your office had received through channels from the Department of Defense to investigate and report upon the matter, and to determine the attitude of the Department of Defense in that connection. I presented an oral argument to you and your associates at that time in which I emphasized that it was not our purpose in presenting the matter to the Department of Defense to request any affirmative action on its part, but rather, to acquaint the Department with the situation and to request merely an indication that the Department of Defense has no objection to the submission of the bill to the Congress for consideration upon its merits. At the end of the conference, you asked that we submit the matter fully in writing as a convenient basis for your ascertaining the policy of the Department of Defense with reference to the proposed bill. This memorandum is accordingly submitted in triplicate, in compliance with your request. If there is any additional information you wish, please let me know.

WILLIAM F. FRIEDMAN

Mr. William F. Friedman has been an officer of the Army and a civilian employee of the War Department and the Department of Defense for almost 30 years; he began his civilian employment with the War Department in 1921. Throughout the entire period of his employment with those Departments he has worked in the highly specialized field of military communications, specifically cryptology,

and for his entire period of employment the character of his work has been highly classified. He is now Chief of the Technical Division, Armed Forces Security Agency, Department of Defense. In World War I, Mr. Firedman was a first lieutenant in the Military Intelligence Division, assigned in 1918 and 1919 to General Headquarters, AEF, in France, in charge of the German code-solving section of the Intelligence Division. From 1922 to 1941, he held a commission in the Signal Corps Reserve, attaining the grade of lieutenant colonel. He was retired in 1941 from the Reserve Corps upon the finding of the Surgeon General of a permanent impairment of health. Despite his illness, however, he received for his work in connection with World War II the highest civilian awards of honor bestowed by the United States: the Medal for Merit awarded by President Truman and the Commendation for Exceptional Civilian Service awarded by Secretary of War Stimson. The citation accompanying his Medal for Merit reads as follows:

"William F. Friedman, for exceptionally meritorious conduct in the performance of outstanding service, conspicuously above the usual, with the Government of the United States during the period from 8 September 1939 to 2 September 1945, in duties of considerable responsibility while Director of Communications Research, Army Security Agency, Military Intelligence Service, Washington, D. C. By untiring and self-sacrificing devotion, by exceptional technical ingenuity in an extremely specialized field, which ranks him among the world's foremost authorities, by able leadership, by initiative and zeal above and beyond the requirements of duty. Mr. Friedman distinguished himself in contributing directly and tremendously to the successful prosecution of the war effort. The conduct of Mr. Friedman has been in keeping with the highest traditions of the Government Service."

The citation accompanying the Commendation for Exceptional Civilian Service reads as follows:

"For outstanding performance of service to the War Department, over and beyond the requirements of duty, during his extended period of service with the Signal Corps. He has demonstrated a degree of initiative, forethought and leadership which has proved of utmost importance to the Army Signal Corps in the execution of its mission. His research and developments in the field of military communications have been valuable to the operation of all units of the Armed Forces."

The highly classified nature of Mr. Friedman's services, of course, made it impossible to set out specifically in the citations quoted above the work for which he was honored. In this connection, however, it is interesting to note that he was one of the first in World War II to receive these awards.

THE INVENTIONS INVOLVED

During the period of his employment with the War Department, Mr. Friedman invented a number of systems and devices in the field of military communications, some alone, others in collaboration. With respect to some of the inventions, patents have been issued: as to others, patent applications are being held in secrecy under the 3-year rule (35 U. S. C., sec. 37) or Public Law 700 (35 U. S. C., sec. 42) or both; as to at least 2, the need for secrecy was such that no patent applcations were ever filed with respect to them. Some of the inventions on which patents have issued were held in secrecy for a time either under the 3-year rule or Public Law 700 and were subsequently allowed to go to issue. The specific inventions, patents, and patent applications involved in this matter, with the revelant information concerning each of the inventions are set out in the following table:

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Patent No.	Description	Inventors	Filed	Issued	Held under—		Used by Government	Owner	License
					3-year rule	Public Law 700			
	Issued patents:								
2,395,863	Crypto device (strip board)	Friedman	Oct. 19, 1939	Mar. 5, 1946	No	Yes	Yes	Inventor	Government.
	Serial Nos.								
	Pending applications:								
682,096	(Conv. M-134)	do	July 25, 1933		Yes	Yes	Yes	Government	Inventor.
107,244	(Conv. M-134-T2)	do	Oct. 23, 1936		Yes	Yes	Not yet	do	Do.
70,412	SIGABA (Conv. M-134-C, ECM).	Friedman and Rowlett.	Mar. 23, 1936		Yes	Yes	Yes	do	Do.
478,193	Facsimile enc. sys.	Friedman	Mar. 6, 1943		Yes	No	?	Inventor	Government.
549,086	(Conv. M-325)	do	Nov. 8, 1944		Yes	Yes	Yes	do	Do.
443,320	SIGCUM (Conv. M-228)	Friedman and Rowlett.	May 16, 1942		Yes	Yes	Yes	do	Do.

In addition to the inventions set out in the table above, two basic inventions in the cryptanalytic field were made by Mr. Friedman and submitted for action to the Signal Corps Patent Board in April 1937. Because it considered these inventions so highly classified, the Board recommended that no patent applications be filed, and, in fact, no applications were ever filed with respect to them. However, at least one of these basic inventions was used and developed and extensions of it are now in use.

The inventions described above all arose in connection with the official duties of Mr. Friedman, but not as a result of any specific direction or designation to invent the things involved. In fact, all the inventions listed above were made while Mr. Friedman was engaged in other work which was in part responsible for his ultimately receiving the Medal for Merit. The official descriptions of the various posts held by Mr. Friedman in the course of his employment cannot of course be submitted because of their classified nature; but Mr. Friedman assures us that nowhere in the official records will there be found any designation to invent a specific thing, and that, in fact, no such designation was ever made. Further, specific findings have been made with respect to several of his inventions, including one of the latest and most significant still in secrecy (Serial No. 443,320, filed May 16, 1942), that they were not the result of any specific direction or designation to invent the thing involved, these findings being made by a board having special jurisdiction for that purpose, the Signal Corps Patent Board. And, in consonance with this state of the facts, under the provisions of A. R. 850–50, Mr. Friedman, along with his collaborators, has in fact been allowed to retain, either by ownership of the patent or exclusive license, the domestic commercial rights and all foreign rights in the inventions listed in the table above.

On April 25, 1936, Mr. Friedman subscribed a document purporting to constitute an agreement to make a complete assignment of any inventions thereafter made by him to the United States, if the Chief Signal Officer requested such assignment. No such request has been made with respect to any of the inventions described above and in all the inventions made subsequently to April 25, 1936, Mr. Friedman has been allowed to retain rights under the provisions of A. R. 850–50, to the same extent as in those inventions made prior to that date, excepting those two so highly classified that no patent applications were filed. The provisions of the 3-year rule and Public Law 700 were, of course, invoked to maintain secrecy.

The salient fact regarding all the inventions which were or still remain in secrecy, is that the rights retained by Mr. Friedman cannot be exercised while an invention is in a secrecy status. In making this point, we wish to emphasize that there is no question as to the wisdom of the judgment placing any of the inventions in secrecy. Indeed, it appears that most of the inventions still in secrecy are of such significance to our national defense, that the prospect of their release at any time in the near future seems remote, and Mr. Friedman would be among the first to argue that the retention of the secrecy status with reference to them is necessary in the national interest, whatever may be the consequences to his personal fortunes.

It is not our purpose to argue the strict legal status of the rights Mr. Friedman may have in his inventions or of any claim he may have arising from these rights. The reasons for this will become clear, we believe, when we discuss later in this memorandum the nature of the relief we seek for Mr. Friedman. But because the legal issues are relevant to the equitable considerations later to be discussed we wish to point out the nature of those issues.

It seems fairly beyond the realm of dispute that the rights which Mr. Friedman may have in his inventions have been substantially and adversely affected in at least two ways in connection with those specific inventions which were in secrecy and sbusequently released as well as with those that today remain in secrecy; first, to the extent that the secrecy requirement has prevented and still prevents the use of such rights during the period of secrecy and second, to the extent that foreign governments may have been or still are permitted the use of any of the inventions during the period of secrecy. The first type of impairment has occurred to a more or less substantial degree in respect of all those inventions described above which were placed in secrecy. Because of the secrecy surrounding the use of the inventions, the Department of the Army and the Department of Defense alone would know the exact measure of the second type, namely, that resulting from the use of any particular invention by foreign governments. One of the conditions under which Mr. Friedman was permitted to retain counsel in this matter was that he would not disclose any classified information and therefore we are not in full possession of the facts.

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With respect to the inventions released from secrecy, and on which patents have issued, the question is raised whether Mr. Friedman has a claim in the case of Patent No. 2,395,863 under the provisions of Public Law 700 (35 U. S. C., sec. 42), which provides as follows:

"Whenever the publication or disclosure of an invention by the granting of a patent might, in the opinion of the Commissioner of Patents, be detrimental to the public safety or defense he may order that the invention be kept secret and withhold the grant of a patent for such period or periods as in his opinion the national interest requires: *Provided*, That the invention disclosed in the application for said patent may be held abandoned upon it being established before or by the Commissioner that in violation of said order said invention has been published or disclosed or that an application for a patent therefore has been filed in a foreign country by the inventor or his assigns or legal representatives, without the consent or approval of the Commissioner of Patents."

"When an applicant whose patent is withheld as herein provided and who faithfully obeys the order of the Commissioner of Patents above referred to shall tender his invention to the Government of the United States for its use, he shall, if and when he ultimately receives a patent, have the right to sue for compensation in the Court of Claims, such right to compensation to begin from the date of the use of the invention by the Government: *Provided, That the Secretary of War or the Secretary of the Navy or the chief officer of any established defense agency of the United States, as the case may be, is authorized to enter into an agreement with the said applicant in full settlement and compromise for the damage accruing to him by reason of the order of secrecy*, and for the use of the invention by the Government." [Emphasis added.]

With respect to those inventions still in secrecy, which are of such significance to our national interest that their ultimate release from secrecy seems at best remote, the question is raised whether the Secretary of the Army, or the Secretary of Defense in accordance with the authority granted by Public Law 700, should not "enter an agreement with the * * * applicant in full settlement and compromise for the damage accruing to him by reason of the order of secrecy."

We appreciate fully that the application of the provisions of Public Law 700 to inventors in the position of Mr. Friedman is subject to argument; we point out the legal issues here not to argue such issues, but rather to show subsequently the relevance of these issues to the equitable considerations in the matter.

THE RELIEF SOUGHT

As we have already indicated, it is not our purpose to argue the strict legal issues that may exist in the case of Mr, Friedman, the reason being that the strict legal issues are not the foundation for the relief we are seeking on his behalf. Mr. Friedman does not request any affirmative action of the Department of the Army or of the Department of Defense.

What we seek on Mr. Friedman's behalf is an opportunity to present his case to the Congress without objection on the part of the Department of Defense,

We propose to have submitted to the Congress a bill authorizing the Secretary of the Treasury to settle all claims and rights of Mr. Friedman in respect of all the inventions described above for the sum of $100,000, the bill being in the following form:

"A BILL For the relief of William F. Friedman

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to William F. Friedman. out of any money in the Treasury not otherwise appropriated, the sum of $100,000 in full settlement for all rights in respect of his inventions in connection with military, naval. and air communications facilities, which are now or at any time have been placed in secrecy status by the War Department or the Department of Defense, including but not limited to all rights with respect to his inventions covered by Patent Numbered 2,395,863, and by patent application serials numbered 682,096, 107,244, 70,412, 443,320, 478,193, and 549,086 and with respect to all inventions for which patent applications have been withheld by the War Department or Department of Defense in order to preserve secrecy: *Provided*, That no part of the amount appropriated in this act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with such claims and rights."

The sum of $100,000 will not be submitted as having any relation to the legal measure of damages due to the impairment of Mr. Friedman's rights in his inven-

tions because of the secrecy orders. We think that a figure determined in accordance with any legal measure of damages could reach a magnitude in his case which would be far beyond the range and purpose of the relief we seek; indeed, the experience of the War Department in the purchasing of rights in inventions of this nature would probably offer a fair indication of the value of the foreign and domestic commercial rights in Mr. Friedman's inventions. The sum of $100,000 will be submitted to the Congress as a sum Mr. Friedman can reasonably request in the light of the equitable considerations to be discussed below.

At this point, we wish to make it doubly clear that we ask nothing of the Department of Defense except an indication that the Department will not object to the submission of the bill described above to the Congress for consideration upon its merits. It is of course obvious that Mr. Friedman, who is a high-level technical consultant in the Department of Defense, would be highly embarrassed if he were to take any action in the matter without first soliciting the attitude of the Department upon it. It seems equally obvious that it is desirable from the Department's viewpoint that we ascertain its policy before proceeding.

THE EQUITABLE CONSIDERATIONS

Mr. Friedman is now 59 years old and has dedicated his entire adult life to the work he has done for the War Department and the Department of Defense. He has made inventions of the greatest importance, and has retained rights in them which he will probably never be able to exercise in his lifetime because of the orders maintaining them in secrecy. He has received the highest honors the United States can bestow upon a civilian, but, ironically, the very significance of the work which brought him honors has placed upon him burdens and disabilities to which he would not otherwise have been subjected. It will be necessary to catalog only a few of them in order to demonstrate this.

(*a*) In the course of his work, but beyond the requirements of any of his duties, Mr. Friedman performed basic research, developed techniques and made discoveries and inventions of a significance to the national interest which we understand would challenge the most creative imagination to evaluate in any monetary terms. In accordance with the firm policy of the War Department to offer an incentive for inventive genius, which brought about such exceptional results in the case of Mr. Friedman, he was granted the domestic commercial rights and foreign rights in his inventions. If those inventions had been of only minor significance to the national interest, Mr. Friedman would have been in a position to benefit from those rights. Because of their inestimable importance to the national interest, however, Mr. Friedman has been effectively and properly (from the point of view of the national interest) foreclosed from exercising any of his rights in his most significant inventions. It seems equitable, and desirable from the viewpoint of the Government, to mitigate by some token the penalty which has thus unintentionally been imposed upon high achievement, and to vindicate in some small measure the longstanding War Department policy of stimulating inventions, a policy which failed here simply because it was so successful.

(*b*) The desirability of some relief for Mr. Friedman in this situation is heightened by reference to the policy of the Congress expressed in 1946 by the statutory authority granted to all Government departments to make awards to Government personnel for any suggestions beneficial to the Government (5 U. S. C., sec. 116a), without limitation in amount, so far as the Department of Defense is concerned. In furtherance of this policy, awards have been made for suggestions improving methods of packing, office procedures, files, and the like. It is not reasonable to assume that a Congress which authorized such rewards for any helpful suggestions to the Government, would not authorize relief for Mr. Friedman in the extraordinary situation in which he finds himself.

(*c*) Although it may be that the provisions of Public Law 700 do not apply to inventors in the position of Mr. Friedman, they point generally to the consideration given to the problem set out in paragraph (*a*) above by the Congress and show a further disposition on its part to grant relief against inequities of this nature. The patent provisions of the Atomic Energy Act (42 U. S. C., sec. 1811) likewise show the concern of the Congress to avoid stifling the inventive urge in those areas of our national interest of the highest importance by compensating for the penalties which are dictated by necessity.

(*d*) The secrecy which has surrounded all the achievements of Mr. Friedman in connection with his duties for the Government, has effectively circumscribed any opportunities of Mr. Friedman to engage in his profession elsewhere whether by teaching, writing, lecturing, by independent invention, or otherwise. It may be noted in this connection that Mr. Friedman has written a number of basic works

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in his field which are maintained in secrecy and are available for use only to a comparatively small group within the Department of Defense.

(*e*) The secrecy surrounding all his work has effectively denied Mr. Friedman the recognition his superior work deserves and to which men in all professions and science aspire. The recent experience of the Atomic Energy Commission in its efforts to retain in its employ scientists of the highest caliber under a blanket of secrecy is relevant to the present case. (See Report of the Joint Committee on Atomic Energy, 81st Cong., 1st sess., October 1949; S. Rept. No. 1169, p. 36.)

(*f*) The immeasurable stress of his work and the burden of responsibility imposed by the necessity for constant secrecy ever since 1921 were major factors in the impairment of Mr. Friedman's health which now makes his livelihood increasingly precarious.

It is this last consideration which finally induced Mr. Friedman to permit us to bring the matter to the attention of the Department of Defense. Of course, this consideration needs no documentation because much of the medical attention Mr. Friedman has received over the past several years has been in Army and veteran hospitals. As already indicated, also, Mr. Friedman was required to retire from the Reserve Corps in 1941 for this reason. We are enjoined by Mr. Friedman from expanding upon this consideration and laying upon it the stress we think it deserves. This alone explains the bareness of its presentation.

THE PRECEDENTS

There are at least two precedents for the relief we propose to seek from the Congress on behalf of Mr. Friedman, both involving the invention of devices in the field of military communications. The first, entitled "An Act for the Relief of Capt. Russell Willson", and the second, entitled "An Act for the Relief of Maude P. Gresham and Agnes M. Driscoll." The full statement of facts and the legislative history of each of these acts is attached hereto as appendix A.

(*a*) In each of the cited cases, a single cryptographic device was involved, invented in one case by a naval officer and in the other by a naval officer in collaboration with a civilian employee of the Navy Department. In the case of Mr. Friedman, at least nine inventions are involved.

(*b*) The practical significance of the inventions involved in the two cited cases is unknown to us and Mr. Friedman is enjoined from disclosing that information. Only the Department of Defense is in a position to weigh that significance in comparison with the significance of the inventions of Mr. Friedman.

(*c*) As in the case of Mr. Friedman, the devices involved in the cited cases were inventions by officers and personnel of an organization now a part of the Department of Defense, made without designation to invent, put to use by the Government and maintained in a secret status.

(*d*) In the 2 cited cases no patent applications were ever filed and accordingly the inventors had no patent rights in the inventions whatever; with respect to 2 of Mr. Friedman's inventions, he is in exactly the same position. As to the other seven inventions listed in the table above, Mr. Friedman was, in fact, granted the domestic commercial rights and foreign rights. It has already been indicated, however, that these rights have been defeated by the very importance of the inventions, and have been completely nullified for all practical purposes by the necessity for holding the inventions in secrecy. In the case of one of his inventions (Serial No. 682,096), these rights have now been suspended for 17 years; in another (Serial No. 107,244), 14 years; for how many more years they will remain suspended is not even subject to rough estimate. Obviously, suspension in these circumstances becomes synonymous with nullification.

(*e*) The personal considerations in the two cited cases were similar to those in this case.

(*f*) In the two cited cases, the claims submitted to the Congress received the express approval of the Navy Department. Mr. Friedman asks only that the Department of Defense express no objection to the presentation of his matter to the Congress. He would, of course, be happy if the Department of Defense were to give the matter its affirmative approval, but he does not ask that much.

Aside from the cases cited above, which seem parallel to the present case in all respects including the very nature of the inventions involved, there are others where officers and employees of the military services sought and received relief from the Congress for inventions which were put to use by the Government. These cases, of course, are not directly in point here, because we do not intend to make any request based upon Government use of Mr. Friedman's inventions, and for this reason are not cited here. They are mentioned, however, to show generally the disposition of the Congress to aid in the effectuation of the War

Department and Navy Department policies of offering this form of incentive to stimulate invention in the national interest.

CONCLUSION

It has been our purpose to make this memorandum as brief as a reasonable presentation of the matter of Mr. Friedman would allow. It is respectfully submitted as a basis for the request for an indication that the Department of Defense has no objection to the presentation of the matter to the Congress on its merits. The considerations which seem to make that request a reasonable one in the circumstances have been set out along with the factual back ground of the matter. Favorable consideration of the request would be greatly appreciated.

Respectfully submitted.

FISCHER, WILLIS & PANZER,
By HENRY G FISCHER,
Attorneys for William F. Friedman.

APPENDIX A

[H. Rept. No. 284, 74th Cong., 1st sess.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 5564) for the relief of Capt. Russell Willson, United States Navy, having considered the same, report it to the House with the recommendation that it do pass.

The purpose of the proposed legislation is to give Capt. Russell Willson, United States Navy, $15,000 in full settlement for a certain invention of his used in connection with the secret communication facilities of the Navy.

The value to the Navy and to the Government of this invention cannot be measured in dollars and cents. Its value to the Government may be judged by the fact that it was used during the World War in all dispatches between the Navy Department and naval headquarters in London, including those concerning movements of transports, where its secrecy protected thousands of lives and millions of dollars worth of property.

Being aware of comparative ease with which confidential and secret messages were intercepted and decoded by unauthorized persons, Captain Willson conceived and perfected this invention while on a tour of sea duty in 1916. For Captain Willson to have patented this invention would have destroyed its usefulness in that it would then have been open to public inspection; instead, he gave it to the Navy.

The efficiency of the device may be more fully appreciated from a statement made before the committee during the hearings on this bill which is quoted as follows:

"Toward the end of the World War a dispatch from a diplomatic agent in Copenhagen reported that copies of all cables were reaching Berlin and all were being deciphered except those in Navy cipher."

This bill provides for long-delayed compensation for a device which during the World War was the basis of the Navy's system of secret communications.

The Navy Department favors this proposed legislation as is indicated by the letter of the Secretary of the Navy to the Speaker of the House of Representatives which is hereby made a part of this report.

NAVY DEPARTMENT,
Washington, February 4, 1935.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

MY DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill for the relief of Capt. Russell Willson, United States Navy. The proposed legislation provides that the Secretary of the Treasury is authorized and directed to pay Capt. Russell Willson, United States Navy, out of any money in the Treasury not otherwise appropriated, the sum of $15,000 in full settlement for a certain invention of his used in connection with the secret communication facilities of the Navy.

Captain Willson while serving at sea in 1916 conceived and designed this invention relating to the secrecy of naval communications, and developed it in 1917 without suggestions, ideas, or help from any other person at any time. He sub-

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mitted the invention to the Navy Department which accepted it in 1917. The invention has been used by the Navy continuously since that time. For reasons of public policy, it has never been patented. Captain Willson has not in any way, directly or indirectly, received any compensation for his work in producing this invention, nor for its use by the Navy during and since the war.

The sum of $15,000, which the Navy Department believes should be appropriated, is modest in comparison with the value of the invention to the Government during the World War and during the 16 years thereafter that it has been in continuous use.

The Navy Department recommends that the proposed legislation be enacted.

Sincerely yours,

CLAUDE A. SWANSON.

[S. Rept. No. 792, 74th Cong., 1st sess.]

The Committee on Naval Affairs of the Senate, to whom was referred the bill (H. R. 5564) for the relief of Capt. Russell Willson, United States Navy, having considered the same, report it to the Senate without amendment with the recommentation that the bill do pass.

The purpose of this bill is to give Captain Willson $15,000 in full settlement for a certain invention of his used in connection with the secret communication facilities of the Navy.

This bill, if enacted, would involve an additional cost to the Government of $15,000, but the bill is recommended by the Navy Department and the committee feels that this is a just claim in view of the great value his invention has been to the Navy.

The House report, which explains this bill in detail, is hereby made a part of this report.

[H. Rept. No. 284, 74th Cong., 1st sess.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 5564) for the relief of Capt. Russell Willson, United States Navy, having considered the same, report it to the House with the recommendation that it do pass.

The purpose of the proposed legislation is to give Capt. Russell Willson, United States Navy, $15,000 in full settlement for a certain invention of his used in connection with the secret communication facilities of the Navy.

The value to the Navy and to the Government of this invention cannot be measured in dollars and cents. Its value to the Government may be judged by the fact that it was used during the World War in all dispatches between the Navy Department and naval headquarters in London, including those concerning movements of transports, where its secrecy protected thousands of lives and millions of dollars worth of property.

Being aware of comparative ease with which confidential and secret messages were intercepted and decoded by unauthorized persons, Captain Willson conceived and perfected this invention while on a tour of sea duty in 1916. For Captain Willson to have patented this invention would have destroyed its usefulness in that it would then have been open to public inspection; instead, he gave it to the Navy.

The efficiency of the device may be more fully appreciated from a statement made before the committee during the hearings on this bill which is quoted as follows:

"Toward the end of the World War a dispatch from a diplomatic agent in Copenhagen reported that copies of all cables were reaching Berlin and all were being deciphered except those in Navy cipher."

This bill provides for long-delayed compensation for a device which during the World War was the basis of the Navy's system of secret communications.

The Navy Department favors this proposed legislation as is indicated by the letter of the Secretary of the Navy to the Speaker of the House of Representatives which is hereby made a part of this report.

NAVY DEPARTMENT,
Washington, February 4, 1935.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

MY DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill for the relief of Capt. Russell Willson, United States Navy. The proposed legislation provides that the Secretary of the Treasury is authorized and directed to pay Capt. Russell Willson, United States Navy, out of any money in the Treasury not otherwise appropriated, the sum of $15,000 in full settlement for a certain invention of his used in connection with the secret communication facilities of the Navy.

Captain Willson while serving at sea in 1916 conceived and designed this invention relating to the secrecy of naval communications, and developed it in 1917 without suggestions, ideas, or help from any other person at any time. He submitted the invention to the Navy Department, which accepted it in 1917. The invention has been used by the Navy continuously since that time. For reasons of public policy, it has never been patented. Captain Willson has not in any way, directly or indirectly, received any compensation for his work in producing this invention, nor for its use by the Navy during and since the war.

The sum of $15,000, which the Navy Department believes should be appropriated, is modest in comparison with the value of the invention to the Government during the World War and during the 16 years thereafter that it has been in continuous use.

The Navy Department recommends that the proposed legislation be enacted.

Sincerely yours,

CLAUDE A. SWANSON.

[PRIVATE—NO. 79—74TH CONGRESS]

[H. R. 5564]

AN ACT For the relief of Captain Russell Willson, United States Navy

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Captain Russell Willson, United States Navy, out of any money in the Treasury not otherwise appropriated, the sum of $15,000 in full settlement for his invention which has been accepted by the Navy Department for use in connection with naval communication facilities.

Approved, June 13, 1935.

[S. Rept. No. 526, 75th Cong., 1st sess.]

The Committee on Naval Affairs, to whom was referred the bill (S. 1453) for the relief of Maude P. Gresham, having considered the same, report favorably thereon, with amendment, and, as amended, recommend that the bill do pass.

Amend the bill as follows:

Page 1, line 6 to 8 inclusive, strike out the following:

"Navy, out of any money in the Treasury not otherwise appropriated, the sum of $15,000 in full settlement for the late Commander William F. Gresham's invention which has."

And insert in lieu thereof the following:

"Navy, the sum of $8,750 and to Agnes M. Driscoll the sum of $6,250, out of any money in the Treasury not otherwise appropriated, said sums to be in full and complete settlement of all claims by said parties against the United States arising from the invention of the late Commander William F. Gresham which said invention has."

Amend the title of the bill so as to read:

"A bill for the relief of Maude P. Gresham, and for other purposes."

The purpose of the bill is to pay to the widow of the late Comdr. William F. Gresham, United States Navy, the sum of $8,750 and to Agnes M. Driscoll the sum of $6,250 in full and complete settlement of all claims by said parties against the United States arising from the invention of the late Comdr. William F. Gresham which has been accepted by the Navy Department for use in connection with naval communication facilities.

The bill was introduced at the request of the Navy Department. The Department states that the bill is in accord with the program of the President and involves an additional cost to the Government of $15,000.

Commander Gresham invented a device that greatly increased the efficiency of an important part of the naval communication service. This device was of such a secret and confidential nature, and of such importance to the National defense, that the Navy Department confiscated it for the exclusive use of the Navy and prevented Commander Gresham from obtaining a patent thereon. If this invention had been patented its usefulness would have been destroyed, as it would then have been open to public inspection.

Prior to his death, Commander Gresham requested that he be compensated for his invention in the amount of $30,000. Upon receipt of his request the Secretary of the Navy convened a board of three officers to recommend the amount of compensation to be paid to Commander Gresham. The board found, after careful comparison of Commander Gresham's invention with earlier and similar devices, that it greatly increased the efficiency of an important component part of the naval communication service and that $15,000 would be a fair compensation therefor.

The Navy Department has recently conducted a further investigation into the matter and is of the opinion that Commander Gresham was the sole inventor of the device, but that the fundamental cryptograhic principles which the machine was designed to employ probably was conceived by Mrs. Driscoll and disclosed by her to Commander Gresham. The committee is therefore of the opinion that Mrs. Driscoll's rights and interests in the invention are substantially equal to those of Commander Gresham and that she is entitled to a fair percentage of any compensation which may be granted to Mrs. Gresham. The committee therefore, recommends an amendment granting Mrs. Gresham the sum of $8,750 and Mrs. Driscoll the sum of $6,250.

Payment of compensation in like amount to Capt. Russell Willson, United States Navy, for an invention which during the World War was the basis of the Navy's system of secret communications, was authorized and directed by the act of June 13, 1935.

The committee has inspected this invention and believes that it is of great value to the Government in connection with the secret communication facilities of the Navy and is of the opinion that, although the value of this invention to the Government cannot be measured in dollars and cents, $15,000 is a fair compensation therefor.

[H. Rept. No. 1099, 75th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (S. 1453) for the relief of Maude P. Gresham, having considered the same, report thereon with the recommendation that it do pass with the following amendments:

Page 1, line 6, strike out the figures "$8,750" and insert in lieu thereof "$8,690.55".

Page 1, line 11, after the name "Gresham", insert "and Agnes M. Driscoll,".

Amend the title of the bill to read:

"A bill for the relief of Maude P. Gresham and Agnes M. Driscoll."

STATEMENT OF FACTS

As amended, this bill provides for the payment of $8,690.55 to Maude P. Gresham, widow of William F. Gresham, late commander, United States Navy, and the sum of $6,250 to Agnes M. Driscoll, in full and complete settlement of all claims by said parties against the United States arising from the invention of the late Commander William F. Gresham and Agnes M. Driscoll, which invention has been accepted by the Navy Department for use in connection with naval communication facilities.

The invention here compensated for has not been viewed by your committee and its exact nature is not known, but the Navy Department states that—

"It greatly increased the efficiency of an important component part of the naval communication service and that $15,000 would be a fair compensation therefor."

A similar finding has been made by the Senate Committee on Naval Affairs, which viewed the invention, and which found that Agnes M. Driscoll assisted in the design of certain of its fundamental principles. Therefore, the bill includes an award both to the widow of Commander Gresham and to Mrs. Driscoll and the payment of these claims is similar to the action taken by the Congress in connection with another naval invention under Private Law No. 79, Seventy-fourth Congress.

It will be noted that the committee has reduced the payment to Mrs. Gresham by $59.45, which sum was overpaid to her husband as a rental allowance and was

the subject of S. 1313, Private Law No. 86, Seventy-fifth Congress. That law authorized a credit in the accounts of the disbursing officer who made the payment to Commander Gresham. At the time, your committee endeavored to ascertain why the overpayment was not collected from Commander Gresham, and the Department replied that such action was usually taken but that the officer's death had precluded it in the case in question. As the disbursing officer was held liable for the payment, this committee recommended the bill, the evidence disclosing that it was made without negligence on his part and prior to his receipt of certain pertinent instructions. Your committee is not attempting to take a small position with regard to the $59.45 overpayment, but it is constrained to the opinion that it should have been refunded to the Government either by Commander Gresham or his estate, and consequently we can see no reason why it should not be recovered on behalf of the Government. The deduction here made accomplished that purpose.

Further facts relative to these claims appear in the report of the Senate Committee on Naval Affairs and a letter from the Navy Department, both appended.

[S. Rept. No. 526, 75th Cong., 1st sess.]

The Committee on Naval Affairs, to whom was referred the bill (S. 1453) for the relief of Maude P. Gresham, having considered the same, report favorably thereon, with amendments, and, as amended, recommend that the bill do pass.

Amend the bill as follows:

Page 1, line 6 to 8 inclusive, strike out the following: "Navy, out of any money in the Treasury not otherwise appropriated, the sum of $15,000 in full settlement for the late Commander William F. Gresham's invention which has".

And insert in lieu thereof the following: "Navy, the sum of $8,750 and to Agnes M. Driscoll the sum of $6,250, out of any money in the Treasury not otherwise appropriated, said sums to be in full and complete settlement of all claims by said parties against the United States arising from the invention of the late Commander William F. Gresham which said invention has".

Amend the title of the bill so as to read: "A bill for the relief of Maude P. Gresham, and for other purposes."

The purpose of the bill is to pay to the widow of the late Commander William F. Gresham, United States Navy, the sum of $8,750 and to Agnes M. Driscoll the sum of $6,250 in full and complete settlement of all claims by said parties against the United States arising from the invention of the late Commander William F. Gresham which has been accepted by the Navy Department for use in connection with naval communication facilities.

The bill was introduced at the request of the Navy Department. The Department states that the bill is in accord with the program of the President and involves an additional cost to the Government of $15,000.

Commander Gresham invented a device that greatly increased the efficiency of an important part of the naval communication service. This device was of such a secret and confidential nature, and of such importance to the national defense, that the Navy Department confiscated it for the exclusive use of the Navy and prevented Commander Gresham from obtaining a patent thereon. If this invention had been patented its usefulness would have been destroyed, as it would then have been open to public inspection.

Prior to his death, Commander Gresham requested that he be compensated for his invention in the amount of $30,000. Upon receipt of his request the Secretary of the Navy convened a board of three officers to recommend the amount of compensation to be paid to Commander Gresham. The board found, after careful comparison of Commander Gresham's invention with earlier and similar devices, that it greatly increased the efficiency of an important component part of the naval communication service and that $15,000 would be a fair compensation therefor.

The Navy Department has recently conducted a further investigation into the matter and is of the opinion that Commander Gresham was the sole inventor of the device, but that the fundamental cryptographic principles which the machine was designed to employ probably was conceived by Mrs. Driscoll and disclosed by her to Commander Gresham. The committee is therefore of the opinion that Mrs. Driscoll's rights and interests in the invention are substantially equal to those of Commander Gresham and that she is entitled to a fair percentage of any compensation which may be granted to Mrs. Gresham. The committee, therefore, recommends an amendment granting Mrs. Gresham the sum of $8,750 and Mrs. Driscoll the sum of $6,250.

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Payment of compensation in like amount to Capt Russel Wilson, United States Navy, for an invention which during the World War was the basis of the Navy's system of secret communications, was authorized and directed by the Act of June 13, 1935.

The committee has inspected this invention and believes that it is of great value to the Government in connection with the secret communication facilities of the Navy and is of the opinion that, although the value of this invention to the Government cannot be measured in dollars and cents, $15,000 is a fair compensation therefor.

NAVY DEPARTMENT,
Washington, February 5, 1937.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

MY DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill for the relief of Maude P. Gresham.

The purpose of this proposed legislation is to pay to the widow of the late Commander William F. Gresham, United States Navy, the sum of $15,000 in full settlement for an invention of the late Commander Gresham which has been accepted by the Navy Department for use in connection with naval communication facilities.

Prior to his death, Commander Gresham requested that he be compensated for his invention in the amount of $30,000. Upon receipt of this request the Secretary of the Navy convened a board of three officers to recommend the amount of compensation to be paid to Commander Gresham. The board found, after careful comparison of Commander Gresham's invention with earlier and similar devices, that it greatly increased the efficiency of an important component part of the naval communication service and that $15,000 would be a fair compensation therefor.

Payment of compensation in like amount to Capt. Russell Willson, United States Navy, for an invention was authorized and directed by the act of June 13, 1935 (49 Stat.—).

The proposed legislation, if enacted into law, would involve an additional expense to the Government of $15,000.

The Navy Department recommends that the proposed legislation be enacted.

The proposed legislation is in accord with the program of the President.

Sincerely yours,

CLAUDE A. SWANSON.

[PRIVATE—NO. 267—75TH CONGRESS]

[CHAPTER 583—1ST SESSION]

[S. 1453]

AN ACT For the relief of Maude P. Gresham and Agnes M. Driscoll.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Maude P. Gresham, widow of William F. Gresham, late commander, United States Navy, the sum of $8,690.55, and to Agnes M. Driscoll the sum of $6,250, out of any money in the Treasury not otherwise appropriated, said sums to be in full and complete settlement of all claims by said parties against the United States arising from the invention of the late Commander William F. Gresham and Agnes M. Driscoll, which said invention has been accepted by the Navy Department for use in connection with naval communication facilities: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this Act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilt, of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

Approved, August 11, 1937.

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Calendar No. 1840

84TH CONGRESS, 2d Session | SENATE | REPORT No. 1816

RALPH BENNETT AND CERTAIN OTHER EMPLOYEES OF THE BUREAU OF INDIAN AFFAIRS

APRIL 23 (legislative day, APRIL 9), 1956.—Ordered to be printed

Mr. O'MAHONEY, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3639]

The Committee on the Judiciary, to which was referred the bill (H. R. 3639) for the relief of Ralph Bennett and certain other employees of the Bureau of Indian Affairs, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

AMENDMENT

Page 2, line 10, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of this proposed legislation, as amended, is to authorize and direct the Secretary of the Treasury to pay a total of $3,159.29 to the claimant Ralph Bennett and 12 additional claimants in full settlement of all claims against the Government of the United States for loss of personal effects of said 13 claimants in the fire which destroyed the Consolidated Garage of the Bureau of Indian Affairs at Fort Defiance, Ariz., February 6, 1953.

STATEMENT

This legislation was introduced at the request of the Department of Interior which recommends its enactment.

On February 6, 1953, a fire broke out at the Consolidated Garage, at Fort Defiance, Ariz. The 13 claimants named in this bill were mechanics and helpers and were using their personal tools to work

on Government equipment in a Government-owned shop and stored them in this building each night. The building had been used for approximately 15 years as a garage for the Bureau of Indian Affairs. It was saturated with oil and grease, and by the time the fire department responded the building was completely in flames.

The cause of the fire is unknown. According to the Department of the Interior, however, there is no evidence that the fire was caused either by the negligence, wrongful act or omission of any of the prospective beneficiaries under this proposed bill. The Department of the Interior further states that since there is no evidence of negligence, wrongful act or omission on the part of any employee of the Government, the claim cannot be paid under the provisions of the Federal Tort Claims Act (28 U. S. C. 2672). With its report, the Department of the Interior submits an itemized list of items destroyed, showing their depreciated value for which claim is made.

In the absence of evidence to substantiate the fact that legal services have been rendered, the bill has been amended so as to eliminate the payment of any attorneys' fees.

The committee after considering the evidence submitted hereby recommends that H. R. 3629, as amended, be favorably reported.

Attached hereto is the report of the Department of the Interior, together with an itemized list of the property of each claimant which was destroyed.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., January 27, 1955.

Hon. SAM RAYBURN
Speaker of the House of Representatives,
Washington, D. C.

MY DEAR MR. SPEAKER: Transmitted herewith is a draft of a proposed bill for the relief of Ralph Bennett and certain other employees of the Bureau of Indian Affairs.

I suggest that this proposed bill be referred to the appropriate committee for consideration, and I recommend that it be enacted.

The proposed bill would reimburse certain employees of the United States for the loss of certain tools, which were their personal property, in a fire at the Consolidated Garage, at Fort Defiance, Ariz., on February 6, 1953. These mechanics and helpers were using their personal tools to work on Government equipment in a Government-owned shop and stored them there each night.

The building was erected in 1938 and was used continually as a garage by the Bureau of Indian Affairs. Consequently, it was saturated with oil and greases. The fire had been burning for some time when it was discovered by schoolboys at 5:55 a. m. When the volunteer fire department responded to the alarm at 6:05 a. m., the building was completely in flames which made it very difficult for the volunteer fire department to control the fire.

The immediate cause of the fire is unknown. There is, however, no evidence of negligence or wrongful act or omission on the part of the prospective beneficiaries of the proposed bill. Since there is no evidence of negligence or wrongful act or omission on the part of any employee of the Government, the claim cannot be paid under the provisions of the Federal Tort Claims Act (28 U. S. C. 2672). The heating plant in this building was fired by an employee who goes off duty at 11 p. m. and returns to duty at 6 a. m. the following morning.

The total cost to the Government if the proposed bill were enacted would be $3,169.29. There is enclosed an itemized list of the property destroyed by the fire, showing the original cost of the property and its depreciated value.

The Bureau of the Budget has advised that there is no objection to the presentation of this proposed legislation to Congress.

Sincerely yours,

D. OTIS BEASLEY,
Administrative Assistant Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
WINDOW ROCK AREA OFFICE,
Gallup, N. Mex., April 30, 1953.

COMMISSIONER, BUREAU OF INDIAN AFFAIRS,
Washington, D. C.

(Attention of Donald J. Proulx, Chief, Branch of Property and Supply.)

DEAR SIR: Attached is a list of hand tools personally owned by individuals who were employed in the Consolidated Garage and which were lost in the fire of February 6, 1953, at Fort Defiance, Ariz.

This is being forwarded to you to determine if there is anything that could be done to reimburse the employees for the amount of the tools lost in the fire.

The name and list of tools of each individual is as follows:

Stewart Etsitty

1 each Hastings piston-ring compressor	$2. 75
1 each Hastings piston-ring grove cleaner	3. 00
1 each valve-spring compressor	3. 00
1 each bearing scraper	1. 23
2 each suction cups and handle	1. 00
1 each ½-inch drivescrew extractor	3. 47
1 each wheel-bolt inserter and peener	1. 60
1 each 9/16 by 5/8-inch obstruction-box wrench	2. 12
1 each brake adjusting tool (pair)	1. 19
1 each ½-inch drive screwdriver socket	1. 19
1 each ½-inch drive connecting rod socket	. 92
1 each standard feeler gage set	1. 15
1 each master set, feeler gage	2. 05
1 each ignition gage set	1. 29
4 each long-blade, standard feeler gages, ½ by 12 inches	1. 16
1 each adjustable hacksaw	3. 49
1 each rolling head bar	3. 05
1 each conventional type pry bar	3. 68
1 each set of open-end wrenches	17. 77
1 each set of tappet wrenches, 10 inches long	7. 04
1 each set of long-type, extra leverage wrenches, kit	15. 92
1 each 10-inch stillson-pattern pipe wrench	2. 09
1 each 12-inch adjustable crescent wrench	4. 19
1 each slugging wrench, 12-point box type, long type	8. 76
1 each 12-point box wrench, military type	3. 82
1 each long type, box wrench	1. 54
1 each combination 12-point box and open-end wrench	2. 37
1 each set of wrenches, long-type, 12-point, offset box	10. 39
3 each offset box wrenches	5. 00
1 each ¾-inch square drive attachment, 4-inches	1. 25
1 each ¾-inch square drive attachment, 2½-inches	1. 20
4 each ½-inch drive, deep sockets	3. 81
1 each screwdriver socket	1. 13
3 each Phillips screwdriver sockets	2. 38
1 each midget attachment, universal joint type	2. 06
1 each universal socket, 12-point	11. 97
1 each set ¼-inch drive midget socket wrenches	11. 16
1 each ½-inch square drive ratchet wrench	6. 48
1 each 10-inch long, hinge handle, wrench	4. 40
1 each 18-inch long, speed hinge-handle wrench	5. 13
1 each ½-inch drive handle adapter	1. 19
1 each pair heavy duty diagonal cutting pliers	2. 55
1 each pair of brake spring pliers	2. 29
1 each pair of battery pliers	1. 45
1 each pair of duck bill pliers	2. 99
1 each pair of multiple-groove joint utility pliers	2. 90
3 each plastic handle screwdrivers, 3 sizes	4. 69
3 each stubby, plastic handle screwdrivers	3. 09
3 each clutch head (or butterfly) screwdrivers	5. 11
1 each punch and chisel set	8. 72
1 each set of screw and pipe extractors	5. 47

Stewart Etsitty—Continued

3 each hammers, 8-, 10-, 15-ounce	$3.75
1 each special welding tip	1.00
2 each torch lighters	1.50
1 each pair shears	.50
1 each pair of welding goggles	2.50
1 each 18-inch cold chisel	1.85
1 each hollow punch, ⅜-inch hole	.75
1 each padlock	1.00
1 each 24½ by 11½ by 13½-inch tool chest (master)	27.80
1 each standard socket rack (19¼ inches long)	.99
6 each files, flat, triangle, round	1.50
1 each plastic-tip, soft-face hammer	2.45
1 each 18-foot extension cord	.70
1 each pair of gas pliers	2.19
1 each pair of wrench pliers	2.25
1 each pair of vise grip pliers	2.75
1 each pair of ignition pliers	1.85
1 each valve adjuster	2.58
1 each ¼-inch drive socket wrench set, ranging from 7/16 to 1 inch	12.96
1 each ⅜-inch drive socket wrench set, ranging from 7/16 to 1 inch	8.47
1 each needle-nose side-cutting pliers	2.99
1 each collet-type, blind bearing puller set	4.47
1 each steel tape measure	1.00
1 each Pitman arm pry bar	3.92
1 each starter wrench, ⅝-inch box opening	1.91
Total	300.88

Abner Davis

1 each machinist's oak, tool cabinet	$27.90
1 each 16-inch outside caliper	5.40
1 each 16-inch inside caliper	4.80
1 each 2-inch inside caliper	1.59
1 each 2-inch outside caliper	1.85
1 each 6-inch outside caliper	2.10
1 each 6-inch inside caliper	1.80
1 each 8-inch inside caliper	3.00
1 each 8-inch outside caliper	3.40
1 each 50-foot steel tape	4.15
1 each set small drills, 21 pieces	11.20
1 each 6-inch folding rule	1.79
1 each set of small files, 12 pieces	5.65
1 each 12-inch steel rule	2.15
1 each combination square	10.90
1 each surface gage	6.50
1 each set of outside and inside micrometers 1 to 8 inches	68.75
1 each thread gage	1.95
1 each thickness gage	3.75
1 each brace and bit set	6.95
1 each set of socket keys	1.30
1 each punch set, 12 pieces	5.19
1 each 24-piece small tap and die set	8.80
2 each 3-inch C clamp, at 75 cents	1.50
2 each 6-inch C clamp, at $1.25	2.50
1 each 6-inch screwdriver, 34 cents; 1 8-inch screwdriver; 1 12-inch screwdriver, 80 cents (8-inch screwdriver, 58 cents)	1.72
1 each 6-inch divider	1.65
1 each 12-inch divider	3.40
Total	201.64

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James T. Smith

3 each books, AEA tune-up specification charts at $1.50	$4. 50
1 each 16-inch adjustable wrench	6. 45
1 each 18-inch hinge handle, ½-inch drive	4. 96
1 each 9½-inch utility pliers	2. 90
1 each screwdriver	2. 00
1 each gear puller	1. 81
1 each gear puller	5. 21
1 each torque wrenches, ½-inch drive	43. 55
1 each brass hammer	3. 68
1 each finishing hammer	3. 16
1 each adjustable file holder	3. 35
1 each bead dolly	3. 16
1 each panel cutting chisel	1. 81
1 each cold chisel	2. 50
1 each 14-inch extension	1. 60
1 each 16-inch drag link tool	3. 37
1 each gasket scraper	1. 23
1 each low clearance hacksaw	1. 89
1 each combination drop and extension cord	5. 60
1 each electric soldering iron, heavy duty	12. 00
1 each 8-pound sledge hammer	6. 25
1 each welding helmet	4. 25
1 each HS–9 hacksaw frame and blade	4. 95
1 each P. W. 10-inch pipe wrench	3. 00
1 each 0- to 2-inch micrometer	22. 00
1 each starter current indicator	2. 25
1 each GA–41 electric tester	2. 95
1 each BF–611 picking and dinging hammer	2. 95
1 each master lock	2. 25
1 each combination armature and electric tester	25. 00
1 each 4-pound sledge hammer	3. 75
1 each 2-pound ball-peen hammer	3. 95
1 each 4-ounce ball-peen hammer	1. 75
1 each L–73–A ¾-inch drive, ratchet head	21. 75
Total	221. 78

General Miles

1 each torque wrench, reflex type, 100 pounds	$29. 50
1 each AA feeler gage	2. 05
1 each adjustable hacksaw	3. 49
1 each valve adjuster	1. 02
1 each brake adjusting tool	1. 19
1 each Bet'r-Grip special screwdriver	1. 29
1 each plastic handle screwdriver	1. 08
1 each square driver, wrench handle, ½	1. 54
1 each reversible ratchet, ½	7. 00
1 each stillson's pipe wrench, 14-inch	2. 79
1 each combination wrench set	11. 49
1 each set long, ofiset box wrenches	10. 39
1 each tappett wrench set	7. 04
1 each set open-end wrenches	37. 62
1 each set pulley and gear puller	5. 21
Total	122. 70

Please advise as soon as possible if there will be any adjustments in order that the information can be forwarded to the individuals involved.

Very truly yours,

M. D. CLINE,
Chief, Branch of Property and Supply.

Jacob L. Dickens

1 soldering iron, electric	$2. 60
1 drop cord with shield, 50 feet	3. 95
2 hacksaws	6. 98
1 pair welding goggles	2. 85
1 10-foot steel tape	2. 30
1 ¼-valve lifter	2. 45
2 valve grinders, crank type	4. 50
2 King compressors	4. 70
1 King groove cleaner	3. 30
1 tappet adjusting tool	2. 58
1 compresser tester	-------
1 vacuum tester	19. 85
1 timing light	-------
1 valve keeper replacer	1. 95
1 100-foot tape	5. 49
1 carbon scraper	. 55
1 pair tin snips	1. 40
1 precision combination square	10. 40
1 water pump packing nut wrench	-------
1 11/16 by ¾-inch offset Chevy head wrench	1. 71
1 bearing scraper	-------
1 6-inch pipe wrench	1. 39
1 putty knife	. 75
1 4-inch crescent	1. 85
2 oilcans, pump type	3. 90
2 ignition wrench sets	12. 68
3 feeler gages	5. 67
1 set ½-inch drive sockets with ratchet and handles	33. 04
1 set of 6 sockets, ½-inch drive, universal	16. 20
1 set of 8 points sockets, ½-inch drive, 7/16- to ¾-inch	5. 81
1 set of sockets, ⅜-inch drive	23. 02
1 set of universal sockets, ⅜-inch drive	16. 51
1 stud remover with extra jaw	3. 47
1 set ⅜- to 1⅛-inch open end wrenches	17. 77
1 ⅞-inch wheel knocker	. 65
1 wheel knocker, ½-inch	. 55
1 box end wrench, ½ by 9/16-inch	1. 44
1 flex speeder, ½-inch drive	5. 13
1 inside caliper, 6-inch	2. 10
1 compass scriber	2. 10
1 set of box end wrenches, ⅜- to 1-inch	10. 93
1 box end wrench, 9/16- to ⅝-inch	2. 12
1 box end wrench, 1⅛- to 1 5/16-inch	4. 61
1 combination wrench, ⅝-inch	1. 54
1 short box end wrench, ½ by 9/16-inch	1. 23
1 short box end wrench, ⅜- to 7/16-inch	1. 19
1 set of 6 tappet wrenches	10. 56
1 wood chisel, 1¼-inch	2. 00
1 set of chisels and punches, large	6. 92
1 set of chisels and punches, small	6. 70
1 set of Allen wrenches	1. 95
2 offset screwdrivers	1. 71
1 set of sockets, ¾-inch drive, ¾- to 2-inch with ratchet	77. 34
1 set of 4 Phillips screwdrivers	6. 31
2 brake adjusting tools	1. 91
1 offset Phillips screwdriver, No. 6	-------
1 center punch	. 40
1 set deep sockets, 7/16- to 1⅛-inch, ½-inch drive	13. 17
2 1-pound ball peens	1. 90
1 8-ounce ball peen	1. 55
1 Ford tie rod end knocker	3. 37
1 10-inch vise grip	3. 25
1 brake spring plier	2. 29
2 diagonal pliers	5. 98
2 needle-nose pliers	5. 98
1 side-cutter plier	1. 65

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Jacob L. Dickens—Continued

1 heavy-duty plier, 10-inch	$1. 75
1 channel lock, 10-inch	2. 90
1 pump plier, 10-inch	2. 90
2 common pliers, 7-inch	3. 30
1 oxweld lighter	. 35
1 set of 6 telescope gages	14. 25
1 cold chisel 18 inches long	3. 05
1 hand valve grinder	. 35
1 valve guide carbon remover	1. 29
1 battery strap	. 75
1 set of 5 light long screwdrivers and 1 set of 6 light long screwdrivers	13. 23
1 high cone toolbox	3. 65
1 tool cabinet, roll-away	99. 50
1 tool chest	62. 50
1 thread gage	3. 80
1 lathe tool gage, center gage	3. 50
1 brake bleeding hose	
1 valve lifter	2. 60
1 piston ring gage cleaner	3. 30
1 sledge hammer, 2-faced, 6-pound	3. 89
1 ball-peen hammer, 2-pound	2. 25
Total	637. 26
Less one-third off	212. 42
Total	424. 84

Alfred J. Hardy, Jr.

1 valve lifter, short screw type	$2. 60
1 hacksaw	3. 49
1 oilcan	2. 30
1 extension cord with shield	2. 85
1 ¾-inch drive socket set	33. 76
1 ball-peen hammer, 24-ounce	2. 05
1 screwdriver, 12-inch, 7/16-inch tip	2. 54
1 screwdriver, 14-inch, 7/16-inch tip	2. 74
1 welding goggles, fit over glasses	2. 85
1 lighter for torch	. 35
1 creeper	8. 20
1 crescent, 12-inch	3. 35
1 diagonal 7-inch, No. 207 Proto	2. 99
1 ball-peen hammer, 1-pound	1. 90
1 common plier, 7-inch	. 99
1 plier, 10-inch, No. 280 Proto	1. 75
1 putty knife	. 65
1 screwdriver, 12-inch long, 5/16-inch tip	1. 60
1 box-end wrench, 1 1/16- to 1 1/8-inch	3. 65
1 set of 15° box-end wrenches, 3/8- to ¾-inch	6. 63
1 set of box-end wrenches, long type, ⅜- to 1-inch	10. 93
1 screwdriver, ¼-inch bit, 12-inch length	1. 85
1 set of Phillips screwdrivers, Nos. 1 to 4	5. 77
1 screwdriver, ¼-inch bit and 6-inch blade	1. 13
1 screwdriver, 5/16-inch bit and 8-inch blade	2. 00
1 set of wrenches, combination end, 5/16- to ⅞-inch	11. 49
1 extra combination end wrench, 7/16-inch	1. 23
1 set of wrenches, open-end, ⅜- to 1-inch	14. 67
3 wrenches, box-end, short type, ⅜- to 5/8-inch	4. 75
1 drag link socket, ½-inch drive	1. 19
1 set of sockets, ½-inch drive, 7/16- to 1¼-inch with handle	44. 34
1 set of sockets, ¾-inch drive, ⅜- to ¾-inch	23. 02
1 diagonal, 6-inch, No. 206 Proto	2. 79
1 crescent, 6-inch	1. 85
1 ball-peen hammer, 8-ounce	1. 55
1 short screwdriver, No. 2 Phillips	. 92
2 sets of chisels and punches	17. 44

Alfred J. Hardy, Jr.—Continued

1 set of deep sockets, ⅜-inch drive, 7/16- to ¾-inch	$8.42
1 set of deep sockets, ½-inch drive, ½- to 5/16-inch	10.06
1 set of sockets, ¼-inch drive	11.16
1 crescent, 4-inch	1.85
1 set of stud extractors	.80
1 set of ignition wrenches	5.58
1 feeler gage 0.0015- to 0.025-inch	2.50
1 combination feeler gage	1.05
1 set of 3 screw starters	3.50
1 wire clamper	1.00
1 chalk holder	.50
1 set of Allen wrenches, 1/64- to ⅜-inch	.85
1 set of drill bits, 1/8- to ⅜-inch	3.61
1 SAE tap, ⅜-inch	.70
1 wire stripping knife	1.15
1 drift punch, ⅞ by 8-inch	
1 automotive wire test light	2.75
1 brake spring plier, 14 inches long	2.29
1 vise grip, 10-inch	2.25
1 set of 3 offset screwdrivers, 4- to 10-inch	2.79
1 ball peen hammer, 4-ounce	1.45
1 clutch-type screwdriver	1.29
1 screwdriver, ⅜-inch bit, 4-inch blade	1.40
1 screwdriver, 3/16-inch bit, 3-inch blade	.98
1 screwdriver, ⅜-inch bit, 8-inch blade	2.00
1 screwdriver, wood handle	1.40
1 rolling head bar	3.05
1 flex carbon scraper	.55
1 pinch bar, 18 inches long, ⅝-inch	2.74
1 needle nose plier	2.99
1 channel lock plier, 10-inch	2.69
1 drift punch, 7/16 by 12 inches	2.00
1 starter wrench, 9/16- by ⅝-inch	2.12
1 rivet buster, 12 inches long	1.91
1 brass punch, ¾-inch	.50
1 brass punch, 1-inch	.60
1 high cone toolbox with tray and 3 drawers	62.50
1 snap ring plier	2.59
1 set of 4 tappet wrenches, 2 3/16- by ½-inch, 2 3/16- by ½-inch	7.04
3 long punches	3.54
10 files	2.00
1 6-foot steel tape	1.49
1 point file, 5-inch	.15
4 universal sockets 7/16- to ⅝-inch	9.08
Total	413.03
Less ⅓ off	137.68
Total	275.35

Andrew M. Verholt

2 hacksaws	$6.98
1 tie rod end knocker	3.39
1 cylinder head rolling bar	2.58
1 oilcan	1.25
1 set of 6 box-end wrenches, 7/16- to 1-inch	10.39
1 box-end wrench ¾- to ⅞-inch	1.91
1 box-end wrench ⅜- to 7/16-inch	1.13
3 bolt cutter, screw type	16.50
1 precision communication square set	2.25
2 socket set, ¼-drive	22.32
2 set of drills, 1/16- to ½-inch	25.00
1 set of cutting and flaring tools	7.25
1 box-end wrench, 1¼- to 1⅜-inch	6.79
1 box-end wrench, 1 1/16- to 1¼-inch	5.07
1 box-end wrench, 1¼- to 1 5/16-inch	6.79

Andrew M. Verholt—Continued

2 metal clamps, 5-inch	$3.96
1 brake spring plier, 18-inch	1.98
1 carbon scraper	.55
1 valve adjusting wrench, ½-inch drive	2.58
1 set of Allen wrenches	1.25
2 sets of sockets, ½-inch drive, 7/16- to 1¼-inch	88.68
1 extension, ½-inch drive, 22 inches long	2.99
1 set sockets, 8-point, ½-inch drive, 6 pieces	2.58
1 set of 8 wood chisels, ⅛- to 1½-inch	8.20
1 cross peen, 3-pound	2.98
1 ball peen, 1½-pound	1.85
1 ball peen, 8-ounce	1.45
1 ball peen, 1-pound	1.69
1 ring compressor (large)	2.35
1 piston ring remover and replacer	2.35
1 compass scriber, 8-inch	1.98
1 outside caliper, 4-inch	1.25
2 brake adjusting tools	1.14
1 inside and outside caliper, 8-inch	1.45
2 ½-inch stud extractor	6.94
1 ¾-inch stud extractor	11.14
1 Oxwell lighter	2.15
1 set of sockets, ⅜-inch drive	20.37
1 ⅜ ratchet	5.13
1 extension, ⅜-drive, 18 inches long	2.33
1 set of deep sockets, ⅜-inch-drive, 7/16- to ¾-inch	8.42
1 set of steel sockets, ⅜-inch drive, 7/16- to ¾-inch (8 pieces)	20.37
1 set of Allen wrenches (large)	6.00
1 shaft speed indicator	2.35
1 valve grinder crank type	2.19
2 sets of tappet open-end wrenches	14.08
2 sets of open and box-end wrenches, 7/16- to ¾-inch	11.49
2 sets of ignition wrenches	18.20
1 short box-end wrench, ⅝- by 11/16	1.33
1 leather punch special	2.75
4 feeler gage	10.00
1 combination square	1.15
1 Diagonal, 8-inch	2.55
2 needle-nose pliers, 8-inch	5.98
1 welder vise-grip plier, 10-inch	2.65
1 pipe grip plier, 8-inch	2.19
1 water pump plier, 10-inch	2.69
2 common pliers, 8-inch	5.60
1 cotter key puller plier	1.75
2 sets of open-end wrenches, 7/16- to 1¼-inch	35.54
1 90° open-end wrench, ½ by 9/16-inch	.85
1 90° open-end wrench, ⅝ by ¾-inch	1.00
2 sets of punches and chisels	17.44
2 center punches	1.62
1 set of small chisels and punches	5.56
2 brake adjusting tools	2.38
1 set of spinner wrenches, ½- to 2-inch	4.50
1 set of 8 reamers, ¼- to ⅜-inch	9.20
1 thread gage	1.89
1 crescent, 4-inch	1.85
1 crescent, 6-inch	2.19
1 crescent, 10-inch	4.15
1 crescent, 20-inch	10.95
1 set bushing extractors	5.47
2 adjusting reamers, ⅜-inch plus, 7/16-inch plus	7.30
1 pair welding goggles	2.15
1 drop cord with shield, 50-foot	4.25
1 hand drill	1.69
1 wedge point bar	.98
1 set of gasket punches	4.55
1 steel tape, 10-foot	1.49

Andrew M. Verholt—Continued

1 set of Phillips screwdrivers	$4. 75
1 set of clutch head screwdrivers	2. 70
1 set of 5 screw head lock replacers	5. 40
1 set of 9 screwdrivers, ½- to 14-inch	7. 60
1 set of sockets, ¾-inch drive, ⅞- to 2-inch with box	77. 34
1 universal adapter, ¾-inch	8. 13
2 side cutter pliers	5. 30
1 flex handle, ¾-inch drive, 20 inches long	4. 96
1 high cone toolbox	4. 95
1 tool chest	62. 50
1 tool cabinet, roll-away	99. 50
1 pinch bar, 24-inch	2. 50
1 lever-jaw wrench, 9-inch	2. 45
1 trigger oiler	1. 45
1 combination square, 12-inch	10. 80
1 tin snips	2. 65
Total	850. 64
Less ⅓ off	283. 55
Total	567. 09

Richard T. Slinkey

1 hacksaw	$3. 49
1 regular ball-head mechanic hammer	1. 65
1 small ball-head mechanic hammer	1. 25
1 regular flat-top toolbox	6. 49
1 small flat-top toolbox	3. 65
1 set of open and box-end wrenches, ⅜- to 1½-inch	11. 49
1 set of sockets (½-inch drive) ⅜- to 1⅛-inch	29. 39
1 open wrench, ½-inch	1. 00
1 set of Allen-type wrenches	1. 25
1 set of screwdrivers	4. 69
1 vise-grip plier	2. 25
1 set of punches and chisels	8. 72
2 deep sockets, ⅝- and 1 1/16-inch	1. 62
1 lineman's side-cutting pliers	2. 50
1 set of open wrenches, ⅜- to 1-inch	25. 59
1 sparkplug wrench	1. 20
1 obstruction wrench, ⅜-inch 1 end, and 1 1/16-inch on other	2. 12
Total	108. 35
Less ⅓ off	36. 12
Total	72. 23

Jose Martinez

1 set of Allen wrenches	$1. 25
1 set of 6, bolt extractors	5. 50
2 ratchet-type valve lifters	5. 20
1 set of tappet wrenches, ¼- to ½-inch SAE	12. 50
2 lighters	1. 30
1 set of bits, 1/16- to ½-inch	19. 80
1 carburetor wrench	. 75
1 ring compressor	2. 75
2 hacksaws	5. 00
1 crescent, 6-inch	1. 75
1 crescent, 8-inch	2. 10
1 carpenter square	3. 50
1 set of open-end and box-end wrenches, 1/16- to ¾-inch	11. 49
1 open-end wrench (heavy duty), 1 1/16-inch	3. 57
1 open-end wrench (heavy duty), 1⅛-inch	4. 09
1 set of tappet wrenches, 1/16- to ⅞-inch	10. 65
1 set of open-end wrenches, ⅜- to 1-inch	11. 77
1 set of box-end wrenches, ⅜- to 1½-inch	22. 59
2 sets of screwdrivers 1 (heavy duty)	5. 00

Jose Martinez—Continued

1 battery plier	$1.45
2 water pump pliers	5.80
1 pipe wrench, 10-inch	1.39
1 pipe wrench, 12-inch	2.79
3 mechanic hammers, 8 pound and 2 2-pound	6.25
1 small tin snips	4.25
1 long-nose plier	2.99
2 small ball peen hammers	3.50
1 diagonal plier	2.79
1 regular plier	1.75
1 set of chisels and punches	14.75
1 set of sockets, ¾-inch drive, ⅞- to 2-inch	77.34
1 socket, ¾-inch drive, 1⅛-inch	1.50
1 box-end wrench, 1⅞-inch	6.17
1 combination square	2.50
1 crescent wrench, 10-inch	2.50
1 set of sockets, ⅜- to 1¼-inch, ½-inch drive	44.39
1 set of sockets, ⅜-inch drive, ⅜- to ⅝-inch	23.02
1 set of offset screwdrivers	2.55
1 set of midget screwdrivers	5.00
2 center punches	1.50
1 ignition plier	.45
2 feeler gages	5.00
1 8-foot steel tape	1.50
2 brake-adjusting tools	2.38
1 rolling bar	1.50
1 oilcan	1.25
4 deep sockets $^{25}/_{32}$- to 1-inch	6.00
1 trouble light	4.75
2 goggles	2.50
1 toolbox, high cone top	7.15
1 small pinch bar	1.25
1 grease-fitting extractor	.65
1 drain-pipe wrench	.75
1 regular flat-top toolbox	6.49
1 vernier-caliper, 6-inch	1.50
Total	387.86
Less ⅓ off	129.29
Total	258.57

Peter Nakaidinae

1 set of sockets, $^{7}/_{16}$- to 1⅛-inch	$29.39
1 crescent wrench, 12-inch	2.75
1 set of open- and box-end, ⅜- to 1-inch	11.49
1 set of box-end wrenches, ⅜- to 1-inch	25.59
1 flex handle ½-inch drive, 18-inch	1.96
2 hacksaws	6.98
1 feeler-gage set	2.50
1 small ball-head mechanic hammer	1.25
1 regular ball-head mechanic hammer	1.65
1 ring compressor	2.35
1 8-foot steel tape	1.50
1 Stillson wrench, 6-inch	1.65
1 Phillips screwdriver, No. 2	1.00
1 set of 4 regular screwdrivers	4.69
1 brake-adjusting tool	1.19
1 needle-nose side-cutting plier	2.99
2 open-end wrenches, ½- and ⅝-inch	2.80
1 spark-plug wrench, $^{13}/_{16}$-inch on 1 end, and ⅝-inch on other	1.40
1 wood chisel	1.00
1 spark-plug wrench, $^{7}/_{8}$-inch on 1 end and ⅝-inch on other	1.20

Peter Nakaidinae—Continued

1 high-cone-top toolbox	$7.15
1 combination square	2.50
1 set of punches and chisels	8.72
Total	123.70
Less ⅓ off	41.23
Total	82.47

Gilbert Kirn

1 diagonal plier	$2.79
1 water pump plier (heavy duty)	2.90
1 regular plier	.89
1 crescent, 4-inch	1.85
1 crescent, 6-inch	2.25
2 offset screwdrivers	1.69
1 set of punches and chisels	8.72
3 center punches	1.95
1 set of sockets, ½-inch drive, ⅜- to 1⅛-inch	44.34
2 universal sockets, ½-inch drive, ½- and 9/16-inch	2.50
1 universal drive, ½-inch drive	1.96
1 set of tappet wrenches	10.65
1 stud wrench	3.47
1 screw-holder screwdriver	2.25
2 sockets 1-inch, ½-inch drive	2.30
1 light ball peen hammer	1.15
1 leather punch	.35
1 set of ignition wrenches	8.15
1 set of ⅜-inch drive sockets	23.02
1 ratchet, ⅜-inch drive	5.13
1 small magnet	1.95
1 set of deep socket, ⅜- to ½-inch	15.50
1 set of box-end wrenches, ⅜- to 1-inch	10.93
1 set of open- and box-end wrenches, ⅜- to 1⅛-inch	37.62
2 sets of open-end wrenches, 5/16- to ¾-inch	7.90
3 feeler gages	7.50
9 screwdrivers	9.00
1 Phillips screwdriver	1.15
1 6-foot steel tape	1.25
1 putty knife	.70
1 tin snips, 7-inch	2.25
1 set of midget sockets, ¼-inch drive	11.16
1 battery plier	1.45
1 set of spark plug wrenches	7.05
1 high-cone-top toolbox	7.15
Total	250.87
Less ½ off	83.62
Total	167.25

Edward Kerr

1 set of sockets, ½-inch drive, 7/16- to 1⅛-inch	$29.39
5 sockets, 8-point, ½-inch drive, ½- to ¾-inch	4.56
6 sockets, 6-point, ½-inch drive, 7/16- to ¾-inch	3.53
1 hacksaw	3.49
2 draglink adjuster, 1 9/16-inch and 1¾-inch	1.00
2 adapters, ⅜ by ½-inch and ½ by ⅜-inch	2.83
1 flex handle, ½-inch drive, 18 inches long	2.99
1 extension, ½-inch drive, 20 inches long	2.99
1 extension, ½-inch drive, 10 inches long	1.96
1 set of 11 sockets, (deep) ½-inch to 1 1/16-inch	11.40
1 battery plier, 7-inch	1.45
1 common plier, 7-inch	1.75
1 needle-nose plier	2.99

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Edward Kerr—Continued

1 diagonal plier	$2.79
1 parrot-nose wrench plier, 9-inch	1.95
1 channel lock plier, 10-inch	2.90
1 vise grip plier, 7-inch	2.25
1 vise grip plier, 9-inch	2.25
1 lock ring and horseshoe plier, 9-inch	2.50
1 brake spring plier	2.29
1 set of punches and chisels	8.72
1 center punch	.81
2 brake adjusting tool	2.38
1 drift punch, 10-inch	1.33
1 wrecking bar, 12-inch	1.25
1 pinch bar, 16-inch	1.85
1 tin snips, 10-inch	2.10
1 crescent type adjustable wrench, 12-inch	4.15
1 crescent type adjustable wrench, 10-inch	2.75
1 crescent type adjustable wrench, 4½-inch	1.85
1 monkey wrench, 12-inch	2.15
1 pipe wrench	2.09
1 regular tire gage	1.00
1 inside calipers	1.50
1 outside calipers	4.50
5 drill bits, 3/16- to 7/16-inch	1.00
1 set of 14 jewel screwdrivers	5.00
1 set of sockets, 24 pieces, ½-inch drive	33.04
1 gas blowtorch, ¼ gallon	4.25
1 oilcan, pump type	1.00
1 battery cell tester	1.50
1 cell test ampere meter	1.00
1 soldering iron, 2-inch	1.00
1 ring compressor	2.35
1 mechanical finger, 24-inch	1.25
1 hand drill, ¼-inch	2.50
1 small funnel	.10
1 battery-carrying strap	1.00
1 ampere and regulator tester	32.95
1 tow chain, ¼-inch, 14 feet long	1.50
1 automotive testmeter, 3- and 6-volt test light, 3- and 6-voltmeter, 30-ampere ampmeter, 6-volt electric buzzer	35.00
1 lock with key	1.50
1 spark plug cleaner	6.00
1 pipe wrench, 6-inch	1.25
1 puller, 6-inch	2.25
1 tie rod end knocker, 12-inch	1.75
1 ball-peen hammer, 3-pound	1.50
1 ball-peen hammer, 1-pound	1.15
1 ball-peen hammer, 4-ounce	1.15
1 flat roof toolbox with tray	8.60
1 set of 9 sockets, ¾-inch drive, 1 1/16- to 1¾-inch	48.54
1 set of sockets, ¾-inch drive ¼- to ¾-inch	23.02
7 universal sockets, ⅜-inch drive, ⅜- to ¾-inch	18.06
1 6-foot steel tape	1.25
1 set of sockets (complete), ¼-inch drive	11.16
1 compression testing gage	20.40
1 carbon scraper	.65
1 valve keeper replacer	1.00
1 pocket knife	1.00
2 putty knives	.70
5 deep sockets, ¼-inch drive, ¼- to 13/32-inch	13.17
1 set of easy-outs	2.25
1 carburetor jet puller	1.40
1 tee slide ruler, 6-inch	1.00
12 screwdrivers	15.00
1 screwdriver, ¼-inch blade, 12-inch long	2.25
1 screwdriver, ½-inch blade, 7-inch long	1.25
1 set of 3 Phillips screwdrivers	3.00

Edward Kerr—Continued

1 set of ignition wrenches (11 pieces)	$9.10
3 ignition open-end wrenches	5.58
4 ignition offset box-end wrenches	3.98
1 feeler gage 0.001- to 0.025-inch	2.50
1 feeler gage 0.001- to 0.018-inch	2.50
1 feeler gage 0.003- to 0.012-inch	2.50
1 ignition breaker point gage	1.29
1 spark plug gage	1.25
1 combination bushing driver, ½- and 9/16-inch	.59
2 valve lifters, 13- and 10-inch	5.20
1 ring groove cleaner	2.80
1 copper tube cutter	2.25
1 valve tappet adjusting tool	2.58
1 stud remover, ½-inch drive	2.75
3 wheel knockers, 1-, 13/16-, and ⅝-inch	3.75
1 set of tappet wrenches, open end	15.65
9 open-end wrenches, ¼- to 1⅛-inch	17.77
6 box-end wrenches, ⅜- to 1-inch	10.93
6 combination wrenches, open and box, 7/16- to ¾-inch	11.49
9 Allen head, screw wrenches, 0.050- to ¼-inch	1.45
5 flange nut wrenches, ⅜- to ⅝-inch	4.15
3 short box-end wrenches, ⅜- to ¾-inch	3.15
1 starter wrench, 9/16 by ⅝-inch	2.12
3 box-end wrenches, ¾- to 1-inch	5.25
1 open-end wrench, ⅝ by ¾-inch	1.25
1 socket with handle, 9/16-inch, 6-point special	1.25
1 ratchet, ⅜-inch drive	5.13
1 combination screwdriver and socket set, 5/64- to 7/16-inch	2.50
1 drill gage, 1/16- to ½-inch	.75
Total	581.84
Less ½ off	190.64
Total	381.20

Ralph Bennett

1 crescent wrench, 10-inch	$2.75
1 stillson wrench, 8-inch	1.59
1 set of open-end wrenches, ⅜- to 1-inch	13.04
3 open- and box-end wrenches, 11/16-, 7/16-, and ½-inch	4.27
2 rachets, ½-inch drive	6.48
1 set of sockets, ½-inch drive, ⅜- to 1-inch	33.04
1 set of box-end wrenches ⅜- to 1-inch	10.93
1 battery plier	1.45
1 heavy-duty plier	1.65
1 slip joint plier	.89
1 diagonal plier	1.79
1 set of punches and chisels	8.72
1 set of Phillips screwdrivers	5.77
1 set of regular screwdrivers	4.69
1 deep socket, ½-inch drive, 11/16-inch	.81
1 6-foot steel tape	1.25
1 open-end wrench 5/32-inch on 1 end and ¼-inch on other	.77
1 feeler gage set	2.50
1 regular ball head mechanic hammer	1.65
4 drills 5/16-, 2 ⅜-inch, 2 7/16-inch	2.50
1 high-cone-top toolbox	7.15
1 pocketknife	1.00
1 brake adjusting tool	1.19
1 set of sockets, ⅜-inch drive, ⅜- to ¾-inch	23.01
Total	139.89
Less ⅓ off	46.63
Total	93.26

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